United States Court of Appeals

for the Second Circuit

APPENDIX

took, abstracted and appropriated to themselves approximately

ORIGINAL

75-1269

United States Court of Appeals

For the Second Circuit

Docket No. 75-1269

UNITED STATES OF AMERICA,

Appellee,

v.

JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

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SECOND CIRCUIT

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INDE

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Superceding Indictment .....

Excerpts of Testimony .....

Charge of Court .....

Original Docket Entries (74 Cr 180)..

Original Indictment (74 Cr 180) .....

Judgment and Commitment of John McLea

Judgment and Commitment of Ramon Vier

Judgment and Commitment of Edward Cod

Notice of Appeal .....

Government's

Paul Stern

Direct .....

Nicodemus Olate Romero

Direct .....

Luis Martinez

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Gabrial Stephania

Direct .....

Colloquy Among Court and Counsel and

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74CR 729

WEINSTEIN

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. JOHN McCLEAN RAMON VIERA and EDWARD CODELIA	For U.S.: K. KAPLAN VIERA-Robert Lazarus- St. B'klyn 855-2200 McLEAN- Albert Brackl Court St. Brooklyn, N MA5-5884 For Defendant: CODELIA- Patrick M. Wall 36 W St. N.Y. 10036 986-

CLOSED

Did conspire to use their authority(police officers) to appropriating monies to themselves from others

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED DATE	NAME	RECEIVED	
Fine, (McLean)	10000	00	6-20-75	Mc Clean, Viera, + Codelia (to ct)	5	
~~fine~~ (Viera)	10000	00	6-25-75	Pd. to Treas		
~~fine~~ (Codelia)	10000	00				
Attorney,						
Commissioner's Court,						
Witnesses,						

DATE	PROCEEDINGS
11-22-74	Before WEINSTEIN J - INdictment filed
12/4/74	Before WEINSTEIN,J.- Case called- All defts arraigned and each ent
	of not guilty- Pretrial conference held and concluded- Trial set f
	April 3, 1975 at 10:00 A.M.
12/4/74	Notice of appearance filed (CODELIA)
12/4/74	Notice of appearance filed (VIERA)
12/4/74	Notice of appearance filed (MC [illegible]
12/4/74	Notice of readiness for trial filed
1/13/75	Notice of motion to dismiss, etc. filed ret. 1/28/75 at 9:30 A.M
1-15-75	Govts motion to dismiss pretrial motions of deft filed.
1/29/75	Copy of Letter to Patrick Wall, esq. from A.U.S.A. Kaplan filed
1/29/75	Letter to chambers from A.U.S.A. Kaplan filed re:immunity for wit

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
1/29/75	Petition for Order granting immunity filed etc.		
1/29/75	By WEINSTEIN,J.- Order of immunity for witness Ernest Solomon filed		
2/11/75	Notice of motion to prohibit U.S. Atty from inquiring into circumstances od deft McClean's dismissal from Police Dept, etc. filed (ret.2-21-75) parties notified.		
2-14-75	Notice of Motion filed, ret. 2-21-75, for severing for separate trials various counts of the indictment, bill of particulars, dismissing the indictment or various counts thereof, discovery, etc.		
2-14-75	By WEINSTEIN J - Order filed that the U.S. Attys office for the Eastern District of NY be granted leave to disclose to the Office of the New York State Special Prosecutor, the transcripts of testimony before Grand Juries for the Eastern Dist of NY of Luis Martinez on Nov. 15,1974 in the case of US v. McLean et al; and the testimony of Martin Hershey on Mar. 18, 1974; the testimony of John Howard on Mar. 15, 1974; the testimony of John Nevins Jr on Mar. 20, 1974; the testimony of Marcial Borges on Mar. 15,1974 and the testimony of Steven Orlow on Mar. 22, 1974 in the case of U.S. vs. John Doe.		
2-18-75	Before Weinstein J - case called & motion to dismiss adjd to 2-21-75 at 9:30 am.(McLean)		
2-20-75	Govts Memorandum of Law filed.		
2-21-75	Before WEINSTEIN J - case called - motion to dismiss, motion for separate trials, etc. all adjd without date.		
2-25-75	Before WEINSTEIN J - case called - defts not present -defts motion for Bill of Particulars, dismissal of the indictment & discovery are denied - defts motions for severance is denied - case adjd to 3-25-75 at 9:30 am for marking of documents - trial set for April 30,1975 @10:00 a		
3/14/75	Letter to chambers from Joel Cohen, esq.(State-special prosecutor)- dated 3/12/75 filed re:that a protective be issued as to certain grand jury testimony, etc.		
3/14/75	By WEINSTEIN,J.- Order filed that above request will be honored by counsel unless good cause in shown- counsel notified as ordered (order on bottom of above letter)		
3-20-75	Letter filed received from Chambers from Kenneth Kaplan, AUSA to confirm the change of date for trial to Mar. 31, 1975.		
3-25-75	Before WEINSTEIN J - case called - Govt Exhibits marked 1 through 70- Trial set for March 31, 1975 at 10:00 am.		
3/27/75	Stenographers Transcript dated 3/25/75 filed		
3/28/75	Govt's propsed voir dire filed		

74 CR--729

CRIMINAL DOCKET

DATE	PROCEEDINGS
3-31-75	Before WEINSTEIN J - case called - defts present - counsels present for defts VIERA & CODELIA Mr. Brackley, atty for deft McLean reported in the hospital - motion by defts XXXXX CODELIA to dismiss count 5 is denied - motion by deft VIERA to suppress identification- hearing ordered
3/31/75	Before WEINSTEIN,J.- Case called- Defts present- Counsels present for defts Viera and Codelia- Mr. Brackley counsel for deft McClean reported in hospital-Motion by defts Codelia to dismiss count 5 is denied-Motion by deft Viera to suppress identification- hearing ordered and begun- hearing concluded-deft's motion to suppress as to March 8 is denied- deft's motion to supppres is denied-Interpreter sworn-Case adjd to 4/1/75 at 10:00 A.M.
4/1/75	Before WEINSTEIN,J.- Case called- Defts and counsel present- except for Albert Brackley, esq. who is reported ill- Deft McClean consents to proceedings with the identification hearing without presence of Mr Brackley- Defts motion to suppress the identification of deft Codelia- Hearing ordered and begun- Hearing concluded- motion denied- Motion by deft McClean and deft Codelia to suppress identification hearing- hearing ordered and begun- hearing concluded- motion denied- Hearing concluded motion denied- So Ordered- Trial adjd to 4/3/75 at 10:25 A.M.
4-3-75	Before WEINSTEIN J - case called - defts & counsels present - Trial ordered & BEGUN - Defendant's motion to sequester the Jury Decision Reserved - defts motion for additional challenges is denied - Jurors selected and sworn - trial contd to 4-4-75.
4-4-75	Before WEINSTEIN J - case called - defts & counsels present - Trial resumed - Bench Warrant ordered and issued for witness Vito Mirabile - Alt. Jurors selected and sworn - trial contd to 4-7-75.
4-7-75	Before WEINSTEIN J - case called - defts & counsels present - trial resumed - Govts motion to sequester Jury opposed by all defts motion denied - trial conts to 4-8-75.
4/8/75	Before WEINSTEIN,J.- Case called- Defts and counsel present-Trial resumed- Portion of transcript dated 4/7/75 ordered sealed and placed in

DATE	PROCEEDINGS
4/10/75	Before WEINSTEIN,J.- Case called- Defts and counsel present- Trial resumed Identification hearing ordered and begun- hearing concluded-Defts motion to suppress denied-Juror #9 discharged-Trial contd to 4/11/75
4/11/75	Before WEINSTEIN,J.- Case called- Defts and counsel present-Trial resumed Defts motion to suppress identification-Hearing ordered held and conclude Defts motion to suppress is denied-Trial contd to 4/14/75 at 10:00 A.M.
4-14-75	Before WEINSTEIN J -case called - defts & counsels present -trial resumed - Govt rests - motion by deft Cordelia for judgment of acquittal- as to each and every count of the indictment - motion denied with leave to renew - motion by deft Viera to dismiss all counts in the indictment is denied - motion by deft McLean to dismiss all counts is denied -trial contd to 4-15-75 at 10:30 am
4-15-75	Before WEINSTEIN J - case called - defts & counsels present - trial resumed - Mr. Wall sums up for deft Codelia; Mr. Lazarus sums up for deft Viera; Mr. Brackley sums up for deft McClean; Mr. Kaplan sums up for the Govt and to complete summation 4-16-75. Trial contd to 4-16-75.
4-16-75	Before WEINSTEIN J - case called - defts & counsels present - trial resumed - Mr. Kaplan sums up for the Govt(resumed from previous day) court charges Jury - alternates discharged - Marshals sworn - Jurors retire for deliberation - Orders of Sustenance signed -Jury seen to hotel at 7:30 PM- trial contd to 4-17-75.
4-16-75	By WEINSTEIN J- 6 Orders of Sustenance filed (Breakfast for 4-17-75; coffee;dinner, transportation, sandwiches and lodging)
4-17-75	10 stenographers transcript filed (pgs 1 to 1807.)
4-17-75	Before WEINSTEIN J - case called - defts & counsels present -trial resumed - Jury resumes deliberations at 8:30 am - Jury returns and renders a verdict of guilty as to counts 1, 2, 3, 4, 5 & 7 as to defts McCLEAN & CODELIA and counts 1 to 5 incl as to deft VIERA. and not guilty as to count 6 as to defts McLEAN, VIERA & CODELIA - Jury polled and discharged - trial concluded - bail cot'd -motions set for May 17, 1975 at 9:30 am and sentences set for June 6, 1975 at 9:30 am.
4-17-75	By WEINSTEIN J - 2 Orders of Sustenance filed.
4-18-75	Govts. Ex.#25 filed.
2/24/75	Stenographers Transcipts dated 4/16/75 and 4/17/75 filed
1/19/75	Before WEINSTEIN,J.- Motions withdrawn by Mr. Wall
5-20-75	Letter filed received from Chambers dated May 14, 1975 from counsel Patrick M.Wall re motions, etc.

CRIMINAL DOCKET

DATE	PROCEEDINGS
5-27-75	Copy of sentencing notice received from Chambers filed setting case for sentencing of defts to June 6, 1975 @ 9:30 am.
6/3/75	Letter to chambers from Patrick Wall, esq. dated 5/30/75 filed
6-6-75	Before WEINSTEIN J - case called & sentence adjd to 6-12-75 at 9:30 am.
6-12-75	Stipulation filed (received from Chambers substituting counsel Patrick M.Wall for deft Viera in place of Robert Lazarus, Esq.)
6-12-75	Before WEINSTEIN J - case called - defts present with attys - deft VIERA sentenced to one year imprisonment pursuant to 18: 4208(a)(2) on counts 1 to 4 to run consecutive/and 5 years imimprisonment on count 5 pursuant to 18:4208(a)(2) to run consecutively with counts 1 , 2, 3 & 4 for a total prison sentence of 9 years and fined $10,000 in count 5 - stay of execution of sentence granted pending appeal - deft to surrender passport; Deft CODELIA sentenced to one year imprisonment on counts 1, 2, 3 & 4 pursuant to 18:4208(a)(2) to run consecutively and 5 years imprisonment on counts 5 and 7 to run concurrently and consecutively with counts 1, 2, 3& 4 for a total prison sentence of 9 years and fined $10,000 on each of counts 5 & 7 to run concurrently for a total fine of $10,000. Stay of execution of sentence pending appeal is granted. Deft to surrender passport; deft McCLEAN & counsel present - motion by deft not to have letter of June 3, 1975 taken into account on sentence granted. Deft sentenced to one year imprisonment pursuant to 18:4208(a)(2) on counts 1, 2, 3 & 4 to run consecutiv ly and fined $1000 on each of counts 1, 2, 3 & 4 to run consecuti ly and sentenced to 5 years imprisonment pursuant to 18:4208(a)(2 on counts 5 and 7 to run concurrently & consecutively with counts 1, 2, 3, & 4 for a total prison sentence of 9 years and fined $10,000 on each of counts 5 & 7 to run concurrently and to run concurrently with fines imposed on counts 1, 2, 3 & 4 for a total fine of $10,000-stay of execution of sentence granted pending appeal - deft to surrender passport.
6-12-75	Judgment & Commitment filed for all defts - certified copies to Marshal.
6-17-75	3 stenographers transcripts filed all dated June 12, 1975 one at 9:30 am, one at 10:00 am and one at 10:30 A.M.

D. C. 109

DATE	PROCEEDINGS
6-20-75	Notice of Appeal filed (as to all defts)
6-20-75	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.
6-27-75	Order received from the Court of Appeals that the Record on Appeal be docketed on or before July 7, 1975.

SUPERCEDING INDICTMENT
74 CR 729

TRR:KJK:pal
F. 743490

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

JOHN McCLEAN,
RAMON VIERA and
EDWARD CODELIA,

Defendants

INDICTMENT

Crim. No.

(T. 18, U.S.C., §§371, 241, 242, 371, 2511(1)(a) and 2)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 22 1974
TIME A.M.
P.M.

- - - - - - - - - - - - - - - - - X

74CR 729

THE GRAND JURY CHARGES:

INTRODUCTION

1. JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, and Leslie Wolff, John Egan, Luis Martinez, and Gabriel Stefania, named herein as co-conspirators but not as defendants, at all times relevant herein, were New York City Police Officers assigned to the Bureau of Narcotics, Special Investigations Unit of the New York City Police Department, acting under color of law of the State of New York.

2. Ernest Solomon and Vito Mirabile, at all times relevant herein, were citizens of the United States.

3. Ernest Solomon, Vito Mirabile, Nicodemus Olate Romero, Elba Guzman and Justo Quintanilla, at all times relevant herein, were inhabitants of the State of New York.

4. The Fifth and Fourteenth Amendments to the Constitution of the United States, at all times relevant herein, provided that no person shall be deprived of life, liberty and property without due process of law.

COUNT ONE

From in or about June 1969, up to and including the date of the filing of this indictment, in the Eastern District of New York and elsewhere, JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, together with Gabriel Stefania, John Egan, Luis Martinez and Leslie Wolff, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully did combine, conspire, confederate

and agree together and with each other to injure, oppress, threaten and intimidate citizens of the United States in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States in violation of Title 18, United States Code, Section 241 and further conspired to subject inhabitants of the State of New York to the deprivation of rights, privileges and immunities secured and protected by the Constitution and laws of the United States in violation of Title 18, United States Code, Section 242.

1. It was part of said conspiracy that McCLEAN, VIERA and CODELIA, the defendants, and Egan and Wolff, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully would use their authority as police officers to take, abstract and appropriate to themselves approximately $21,000 from Nicodemus Olate Romero, Elba Guzman and Justo Quintanilla, thereby depriving said individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

2. It was further a part of said conspiracy that McCLEAN, VIERA and CODELIA, the defendants, and Egan and Wolff, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully would use their authority as police officers to arrest the aforesaid Nicodemus Olate Romero and Elba Guzman and hold them in custody at 65-15 39th Avenue, Queens, New York and elsewhere, thereby depriving said individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of liberty without due process of law.

3. It was further part of said conspiracy that McCLEAN, VIERA and CODELIA, the defendants, and Martinez and Stefania, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully would use their authority

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as police officers to injure, oppress, threaten and intimidate Ernest Solomon, by taking, abstracting and appropriating to themselves approximately $6,000 from said individual, thereby depriving him of the free exercise and enjoyment of a right and privilege secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

4. It was further a part of said conspiracy that McCLEAN, VIERA and CODELIA, the defendants, and Martinez and Stefania, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully would use their authority as police officers to injure, oppress, threaten and intimidate Vito Mirabile by taking, abstracting and appropriating to themselves approximately $10,000 from said individual, thereby depriving him of the free exercise and enjoyment of a right and privilege secured and protected by the Fifth and Fourteenth Amendments of the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

5. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent the disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Eastern District of New York and elsewhere:

OVERT ACTS

1. On or about November 19, 1970, defendants McCLEAN, VIERA and CODELIA and co-conspirators Egan and Wolff took, abstracted and appropriated to themselves approximately $21,600 from Nicodemus Olate Romero, Elba Guzman and Justo Quintanilla, in Queens, New York.

2. On or about November 20, 1970, defendants McCLEAN, VIERA and CODELIA and co-conspirator Wolff caused approximately $60,000 to be taken from a safe deposit box located in a Manhattan Bank in Manhattan, New York.

3. On or about October 27, 1971, defendants McCLEAN,

VIERA and CODELIA and co-conspirators Martinez and Stefania took, abstracted and appropriated to themselves approximately $6,000 from Ernest Solomon in Brooklyn, New York.

4. On or about November 12, 1971 defendants McCLEAN, VIERA and CODELIA and co-conspirators Martinez and Stefania took, abstracted and appropriated to themselves approximately $10,000 from Vito Mirabile in Massapequa, New York. (Title 18, United States Code, §§241 and 371).

COUNT TWO

On or about and between November 19, 1970 and November 20, 1970, both dates being approximate and inclusive, within the Eastern District of New York, JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, acting under color of law, wilfully, knowingly and unlawfully, did take, abstract and appropriate to themselves approximately $21,000 from Nicodemus Olate Romero, Justo Quintanilla and Elba Guzman, thereby depriving said individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law. (Title 18, United States Code, §242 and §2).

COUNT THREE

On or about October 27, 1971, within the Eastern District of New York, JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, acting under color of law, wilfully, knowingly and unlawfully, did take, abstract and appropriate to themselves approximately $6,000 from Ernest Solomon, thereby depriving said individual of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law. (Title 18, United States Code, §242 and §2).

COUNT FOUR

On or about November 12, 1971, within the Eastern District of New York, JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, acting under color of law, wilfully, knowingly and unlawfully, did take, abstract and appropriate to themselves approximately $10,000 from Vito Mirabile, thereby depriving said individual of a right secured and protected by

the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law. (Title 18, United States Code, §242 and §2).

COUNT FIVE

On or about and between the 31st day of October 1970, and the 20th day of November 1970, both dates being approximate and inclusive, within the Eastern District of New York, JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, wilfully, knowingly and unlawfully did intercept and endeavor to intercept by means of an electronic device, that is, a telephone wiretap, wire communications made and sent during the period aforesaid, by and between persons over a telephone located at 65-15 39th Avenue, Queens, New York. (Title 18, United States Code, Section 2511(1)(a) and Section 2).

COUNT SIX

On or about and between the 1st day of November 1971, and the 13th day of November 1971, both dates being approximate and inclusive, within the Eastern District of New York, JOHN McCLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, wilfully, knowingly and unlawfully did intercept and endeavor to intercept by means and use of an electronic device, that is, a telephone wiretap, wire communications made and sent during the period aforesaid, by and between persons over a telephone located at 110-39 62nd Drive, Forest Hills, New York. (Title 18, United States Code, Section 2511 (1)(a) and Section 2)

COUNT SEVEN

On or about and between the 17th day of November 1971, and the 2nd day of December 1971, both dates being approximate and inclusive, within the Eastern District of New York, JOHN McCLEAN and EDWARD CODELIA, the defendants, wilfully, knowingly and unlawfully did intercept and endeavor to intercept by means and use of an electronic device, that is, a telephone wiretap, wire communications made and sent

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during the period aforesaid, by and between persons over a telephone located at 2735 Ocean Parkway, Brooklyn, New York. (Title 18, United States Code, Section 2511(1)(a) and Section 2).

A TRUE BILL.

John B. Russell Jr.
Foreman.

David G. Trager
UNITED STATES ATTORNEY

EXCERPTS OF TESTIMONY

bring the jury in.

(The following took place in open court.)

(The jury is in the jury box.)

MR. KAPLAN: The Government calls Paul Stern.

P A U L S T E R N , a witness called on behalf of the United States of America, was Sworn by the Clerk of the Court, and testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Stern, what is your occupation presently?

A Apartment house manager of a building in Queens.

Q Where is that located?

A 8401 Main Street.

Q Do you want the microphone?

A 8401 Main Street.

MR. KAPLAN: I don't think the microphone is on, your Honor.

(pause)

A The address is 8401 Main Street, Flushing, Queens

Q For how long a period of time have you been so employed?

A About a year and a half.

Q Prior to that time, were you the superintendent in a building, another building in Queens?

A That's right.

whenever they asked me, I helped them.

Q Did there come a time when a conversation was had with yourself and other Police Officers, which they requested something?

A Yes.

Q When was that?

A The first time, they didn't seem to have a center base from where to work in the building. So they asked me if I could find a room someplace where they could sit down in the building, where they wouldn't be as conspicuous as in the lobby.

Q Did you find them a place?

A In the lobby area, in back, there was a painter-meter room vacant, and I put a few chairs and a table there for them, and they used that room for sort of their base of operations, I suppose.

Q For how long a period of time were they in the room when you first gave them the room? Did they come daily?

A They came at periods of maybe an hour and an hour and a half. Sometimes less, sometimes more.

Q With respect to the Police Officers in the meter room, what was the next thing you observed or experienced?

A (No response)

Q In your own observations?

A I went there one day, and they had a tape recorder in the room.

Q Was it playing?

A The first time that I went in there, I saw one of the Police Officers listening to the tape.

Q Which one of the Police Officers are you talking about?

A The one in the center (Indicating).

Q Mr. Codelia?

A Yes.

Q Who else was in the room when he was listening to the tapes at that time?

A It would be difficult for me to specific who was in the room.

Q Was there more than one individual in the room other than Mr. Codelia?

A I am sure there were two other people in the room with us. I don't remember which two Police Officers were in that room with us at that time.

Q We are talking about two out of the three, in other words, either McLean, Viera or Annunciato?

A Yes.

Q These are the only ones we are talking about, these three, plus Annunciato?

A Yes.

Q Two of the three were in the room with Mr. Codelia?

A Yes.

Q What did you observe about the equipment or were there any conversations during the period of time?

A The Police Officer was listening to the tapes, and I was speaking to -- I saw the tape and disregarded it, because to be honest, it didn't interest me. I started speaking with the other officer about any conversation in general.

Q Do you have any specific recollection of who you were speaking with at that time?

A No.

Q Do you recall observing anything with respect to where the tape recorder was attached?

A Yes, it was attached to the telephone box on the other side of the wall.

Q I show you what has been marked Government's Exhibit 108-D for identification, and ask you what that picture depicts?

A This is the picture of the inside of the meter-paint room of the building.

Q Where, if you can tell us, was the tape recorder located?

A In the basement area. Plastering and walls are not made flush as in an apartment. There were porous holes, or hole seepages where the steam pipes go through, and there was a wire passed through, and then down the other wall back-to-back with the telephone cable.

JB fls

(continued on next page.)

Q Where were the telephone cables located?

A On the other side of the wall.

Q Outside the meter room?

A Outside the meter room.

Q I show you what has been marked as Government Exhibit 108-F for Identification and ask you what this picture depicts?

A This is the telephone box. In other words, all you have to do is put these two pictures back to back like this and you have got the exact situation.

Q In other words, the room and on the other side of the wall?

A On the other side you have got the telephone box. And on this side you have the room.

MR. KAPLAN: I will offer these pictures in Evidence at time, your Honor.

THE CLERK: Government's Exhibits 108, 108-A, 108-B, 108-C, 108-D, 108-F, marked in Evidence.

Q Now, let's just take 108-D and 108-F as you say back to back. Maybe you can do it so the jury will understand and show it to them and try to explain it to them.

A This is the inner part of a room. These are telephones. This is a telephone box in the building where all of the connections of any telephone in that building is

connected from here. You take this and turn it around. And if you will notice, there is a door right here on the side of the picture. That door is this door right here. So if you take this inner part of the room and you put it back to back with this, you will see the wall and the door. The wall and the door.

Now, if you will notice, on the top here you have steam pipes in the basement area. The plastering and the walls are not flush as if in a person's apartment. This is in a basement. And when they build the building it is roughly done. And there are always porous holes and very easily you can put wires through those holes and go from one -- do you see the pipe here? In here and here. Here is the -- your pipes here again and it comes out to the wall and into the telephone box.

Q So what you are saying is that the wire ran through the wall onto the other side?

A Through the wall in one of the holes where the steam line was going through and onto the other side and connects to the telephone box.

Q And the wire inside the room is connected to the tape-recording device; is that correct?

A That's right.

Q How many times would you say that you saw the

three defendants and Mr. Anunziata inside the room in question subsequent to the first time that you saw them?

A Oh, in the three, four-week period, maybe five or six times. I would have to say not too frequently this gentleman here, the first gentleman.

Q With the gray hair?

A Yes.

Q Mr. Viera?

A But most of the time it was the other police officer. I forget his name.

Q Nunziata.

A Nunziata. Mr. McNeil.

Q McClean?

A McClean. And this other gentleman.

Q Mr. Codelia?

A Yes.

Q Did you see Mr. Viera inside the room with the equipment?

A I don't remember that at all, sir.

Q Do you recall seeing them together?

A Yes, sir.

Q How often would you say Mr. Viera was with the other three?

A Oh, I saw him maybe three times, maybe four.

But certainly not as frequently as the other officers.

Q Were the three gentlemen and Mr. Nunziata going inside and outside the room from time to time?

MR. LAZARUS: I object to that. It's been asked and answered.

THE COURT: Overruled. You may answer.

THE WITNESS: Would you repeat the question.

MR. KAPLAN: Can we have the court reporter read it.

(Record read.)

THE WITNESS: Yes.

Q You observed of the three defendants and Mr. Nunziata going inside and outside the room; is that correct?

A Oh, yes.

Q Did there come a time when anything unusual happened that you recall with respect to the tape-recorder?

A Well, one day the police officer here -- I am sorry.

Q In the middle?

A Yes.

Q Which one? Mr. Codelia?

A Mr. Codelia. And I -- I met Mr. Codelia outside my office, I believe. And we were on friendly terms. There was no question.

"Hi, Paul, how are you?"

I said, "Where are you going? To the room?"

He said, "Yes."

I said, "I will go with you."

And we were speaking just about anything in general. And we went to the painter's meter room. And he took the tape-recorder down from the steam pipes.

Q Hold on. you said he took the tape-recorder down from the steam pipe. Will you show the jury exactly where the tape-recorder was located when he took it down.

A Well, if you see the steam pipe up here, the tape recorder was put on top of the steam pipes.

Q When he took it down, where did you place it?

A He put it on the table.

Q Then what happened?

A And he put it on and he started listening to the tape or the -- whatever was on the tapes. And at that time I asked him a question. I said, "How can you have a tape that's large enough to pick up a 24-hour period if you will happen to come here and listen to it once a day or once every 12 hours, for that matter? How can you have a tape so large as to consist of a 12-hour period?"

And he explained to me that the tape-recorder starts when the receiver of the man's telephone upstairs is lifted.

Q You say he played the conversation for you?

A Yes. But it was all in Spanish. I couldn't understand anything.

Q Was he listening to them in Spanish?

A Yes.

Q Did he say anything about the conversation?

A No.

Q Did you have any discussion with any of the police officers about what was being said on the tapes, what was the subject matter of the tapes, for example?

A Well, from some conversations I heard with them is that they were just talking about some people making dates of meetings or whatever with some other people. And that was about the extent of it.

Q Who did you have these conversations with about the substance of the tapes?

A The substance of the tapes? I had no conversation with anyone on it. It is because at one time the gentleman came in to listen to the tape.

Q When you say the gentleman, you have to identify him.

A Mr. Codelia.

Q Mr. Codelia?

A Yes. And he listened to the tape and he turned

27a

on the fifth floor.

(Jury enters the Courtroom.)

THE COURT: Bring in the witness, please.

MR. KAPLAN: The witness is in custody, your Honor. He's in transit.

THE COURT: Bring him in.

Swear the interpreter.

(Libya Clancy, an interpreter, was first duly sworn by the Clerk of the Court, to interpret from English to Spanish, and from Spanish to English.)

N I C O D E M U S O L A T E R O M E R O,

called as a witness, having first been duly sworn by the Clerk of the Court, through the interpreter, testified as follows, through the interpreter:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Sir, how old are you?

A 49 years old.

Q Where were you born?

A Valparaiso, Chile.

Q Are you presently married?

A Yes, sir.

Q Mr. Olate, did there come a time when you were expelled from Chile and brought to the United States?

28a

Olate-direct

Q Was money being taken by your wife Elba to Chile?

A Yes.

Q You are telling us that Gusto Quintanilla and your wife were about to leave the apartment, is that correct?

A Yes. They went out to shop at Macys Department Store and I stayed behind preparing a meal so that they could eat when they came back.

Q Apporximately what time was this?

A Well, between 5:00, 6:00 in the afternoon. 7:00.

Q What happened?

A Ten minutes after, more or less, ten minutes after they had gone out to do the shopping, they rang twice into my apartment. And it was a signal we had between us to open the apartment. When I opened the door, three police officers put their guns to my head and they said, "We have been looking for you for some time Nicolate.

Q Have you had occasion to be shown photographs of police officers like you were with the first arrest?

A Yes.

Q I am going to ask you, did there come a time when you identified some people?

A Yes.

29a

15 Olate-direct

A Yes.

Q You have been told the names of these people, is that correct?

A The first time when the book was shown to me they did not tell me the names of the people.

Q Tell us what happened.

A At my apartment?

Q Yes.

A Well, after the three police officers had me with their guns to my head. two or three minutes later two more policemen came up with my wife and Gusto Quintanilla handcuffed.

Q Before you get to that. With respect to the first police officers, do you see any of those police officers in the courtroom?

A Yes sir.

Q Point them out.

A The man in the brown suit with the brown tie (indicating).

MR. WALL: Indicating the defendant Codelia.

Q Of the three, who were the others?

A The one who is here with a plaid jacket (indicating).

Q Which plaid jacket?

A The gentleman there next to the man with the grey hair.

Q Mr. McClean?

A Yes.

Q Who was the third man?

A The third man is not in the room.

Q Do you know, having picked out from pictures, who the third person was?

A Yes.

Q Who?

A A man by the name of Bolf.

Q Do you have a name you used to describe this particular man?

A Yes.

Q What is the name?

A El Feo, the ugly one.

Q So, the ugly one -- withdrawn.

With respect to the two men you just identified, do you know their names?

A Yes. Now I know because the assistant in questioning me questioned me with the names of the man.

Q In other words, you were told the names in the course of having these conversations, correct?

A Yes.

17 Cross-direct

When I was there I was told.

Q This is after picking them out?

A Yes.

MR. WALL: May I ask Mr. Kaplan not lead the witness at this point?

THE COURT: Yes, don't lead.

Q So when the three men came up to you, can you tell us what happened?

A Well, behind came the men whom I knew from my reference -- my reference from my countrymen, and I knew him as the man with the cigar. And the chief of all these policemen, together with another policeman.

They arrived with Gusto Quintanilla and my wife handcuffed.

Q Do you see that other policeman with the chief, the one that came in with the chief, in the courtroom?

A Yes sir.

Q Please point him out.

A The gentleman who is in blue here (indicating).

Q Indicating Mr. Viera?

A Yes sir.

Q Who was the man who you called the chief?

A Mr. Egan.

Q Can you describe him to us?

A Yes. A tall man, grey, white hair, straight nose. About 50 odd years, 56 years old. White, white hair.

Q Describe what happened in the apartment at the time?

A Once they were inside, my wife was kicking the man with the cigar, Mr. Egan. And I would tell my wife "Stay put, woman," and then she said "Tell these dogs to take off the handcuffs, they are hurting my hand."

MR. BRACKLEY: May I have the last comment?

THE COURT: The reporter will read it.

(Record read.)

Q Then what happened?

A Then I said, please, look, she's a woman. Then the man with the cigar said, "Well, have her stay put."

Q Do you understand English?

A No sir.

Q Was Lieutenant talking in Spanish or English?

A The one who spoke everything was Mr. Codelia.

Q What language did he speak?

A He speaks Spanish, Mr. Codelia.

Q Point out the man who was speaking Spanish.

A Mr. Codelia, the one with the brown suit over

there. (Indicating).

Q He was doing the translating for the others, is that correct?

A Yes.

Q What happened in the apartment?

A They started to search throughout the apartment, look around all the apartment. They took out from in among the clothing, my clothes and Quintanilla clothes and some clothing that Santante left there. They took out a gun, 38. And a small bag like that (indicating) with cocaine. And two keys for the bank. And they put them on the little table for the bar in the apartment.

Q Who was doing the searching?

A Well, the one who searched the most was Mr. Codelia. Mr. McClean, Mr. Viera and all of them. Except the man with the cigar.

Q Where did he stay?

A He stayed watching at the door because it was just one room so he stood there and saw everything.

Q You say they took out some cocaine and a gun, is that correct?

A Yes, and they put it on the night table.

And I said "That does not belong to us." And they got angry. They said, "What do you mean? This is

yours because you are in this apartment."

They continued looking around. Out of the night table they took some 10, 11,000 dollars in $100 bills. And somewhere between $6,500 and $6,900 in $50 bills. Out of my pocket they took several bills, 20's, 5's. They took out the money from my wife's handbag. They took out the money from Quintanilla's pockets. And they put everything on the bar table. A small table.

Q Did they segregate the money of the three people they had taken out of the pockets or did they put it all together?

A They put it all together like this (indicating), everything they put together.

Q With respect to this cocaine or narcotics you were talking about, did you have any narcotics in the apartment at that time?

A No sir.

Q Did Quintanilla or your wife have any narcotics in the apartment?

A No sir.

Q Do you know where they got the gun and the cocaine from?

A I thought -- I told them that they had put that there. They didn't accept that. They said I was very daring and theyscreamed at me.

Q When you say they screamed at you, who was doing the screaming?

A Mr. Codelia.

Q For the most part, who was Mr. Codelia translating for?

A Well, he translated everything for the chief, for Mr. Egan.

Q Then what happened?

A Afterwards, I told Mr. Codelia maybe we could talk and he said, "What do you want to talk about."

Q Did there come a time before the conversation when the money was counted?

A Well, the money was counted, yes.

They counted it.

Q Who was counting the money?

A Mr. Codelia.

Q Do you know approximately how much money was counted out?

A Yes.

Q How much?

A $21,600.

Q Did there come a time when something else was found in the apartment that they brought to your attention?

A Yes, the keys to the bank.

Q What type of keys were they?

A Two keys with some numbers that were on them that were for the box in the bank.

Q Do you know who found the keys?

A Well, they were all looking around. I can't tell you for sure who it was that found them but they put them on the table.

Q Was there a conversation at that time with respect to the keys?

A Yes, Mr. Codelia said "How much money do you have in the bank?'

Q What did you say?

A I said I had 30, 40 thousand dollars.

And then he said, "You are lying, you have more money there.'

Q How did he say this?

A "You are lying because you have more money. We know you have more money. You have 30, 40, 50, 60, 70, 80, 90 thousand dollars," he said.

(Cont'd on next page.)

JB:GA
T5R1PM

Q Now, do you recall -- Withdrawn.

How did they know this was a key from the safe deposit box? Do you recall?

A Because they asked me, and I told them it was the key to the bank. That it was the key to the bank for my wife.

Q After Mr. Codelia said, "We know you have more money," what happened during the course of the conversation?

A We started to converse. And then they said -- or I said, "How much money to you want me to turn over to you for my freedom?"

Q You said that to them?

A Because I knew that the money that they had in their possession, they were going to keep.

And then he said, "You have --"

MR. WALL: Excuse me. I am sorry. I move to strike what he knew. The conversation is one thing. But what he surmises is another.

THE COURT: Strike it.

Q What happened with respect to the rest of the conversation?

A So then he said, "One moment, please. I'm going to go and talk to my Chief."

"To my boss," he said.

He went to talk to Mr. Egan, who was at the door

of the bathroom, observing all of the Policemen, all of the conversations we were having.

Well, then, when he came back, when he came back, I said, "Well, are we going to leave this at $50,000?"

And then he said, "You have to give me $60,000 more, and then we can let you go free."

Q Who said that?

A Mr. Codelia.

Q Who was present at the conversation?

A Well, my wife, Zuniga, Quintanilla, and all the Policemen who were there.

Q At the conversation between Mr. Codelia and Egan, do you know who was present?

A Mr. McLean, Mr. Veira, and the other one who was there at the door. Because the door of the kitchen was here. The corridor was here. And the bathroom door was here. Everything was right there.

Q Were they all taking part in the conversation?

A Yes, sir.

MR. WALL: Again, your Honor, I object to the leading. The question ought to be, Who took part in the conversation, rather than, Were they all taking part in the conversation.

THE COURT: Yes. Don't lead.

Q Then what do you recall happening?

A Well, Mr. Codelia went to speak to Mr. Egan. They went a little bit inside the bathroom to talk among themselves, and then when he came back, Mr. Codelia told me, "He has to be arrested."

He said -- asked -- "Otherwise all of them have to go, by order of the Chief."

"Of the Chief," he said.

Q Who said?

A Mr. Codelia.

Q Who was present when it was said?

A Well, all the Police Officers were there except for Mr. Egan, who was at the bathroom door. But they were all listening to it, anyway.

Q This is a one-room apartment; is that correct?

A One single room. Very reduced.

Q With respect to the conversation between yourself and Codelia, when he said that somebody had to be arrested, what was the remainder of that conversation, if you recall?

A Well, when he said somebody has to be arrested, he said, "He has to be arrested."

Or, he said, all of you will have to be arrested.

So then Quintanilla said, "Okay, I will be arrested."

So then, Mr. Egan took all the money from the night table, put it into his pockets of his jacket, took the gun, opened his belt, placed the gun right here, and put it away.

And then I said, 'But why are you going to put in this cocaine which does not belong to us?"

And then Mr. Codelia said, "We have to put him through with something. But tomorrow you can get him out with a $2,000 bail," he said to me.

Q Well, did the Police Officers know anything about your prior arrest?

A Yes.

Q Was there a conversation about that?

A Yes.

Q Do you recall when that conversation took place?

A Yes. Mr. Codelia said, "You have to appear in the Manhattan Court on November 30th.'

Q Was he talking to you, or Quintanilla, or both of you?

A To both of us.

Q Did you have to appear in court on that day?

A Yes. Myself and Justo Quintanilla.

Q What, if anything else happened with respect to Codelia and Quintanilla?

A Well, he was taken under arrest.

Q Do you recall under what name?

A Yes. Under the name of Jorge Santanda.

Q How did that come about?

A Because Mr. Codelia handed him some documents which he pulled out from here, from his pocket. And I don't know where he got them from, whether he had found them in Santanda's clothing. I can't tell where.

Q What did he do with the documents?

A And he handed them to Quintanilla, and he said, "You appear as Santanda, Puerto Rican, born in Ponce. And he was taken under arrest, some District in Brooklyn. And then they took him -- Mr. Egan took him, Mr. Codelia took him, and Mr. Viera.

Q By the way, was Santanda a Puerto Rican, or was he Chilean?

A Chilean.

THE COURT: I think this might be an appropriate time to take a break for a few minutes. Why don't you go out and stretch, Ladies and Gentlemen.

(Whereupon, the jury retired from the courtroom.)

(Recess taken.

MR. BRACKLEY: Will you work until 6:00 o'clock, your Honor?

THE COURT: What time do you require for the full direct?

MR. KAPLAN: I have no idea. Maybe an hour. Maybe less. It's hard to say, with the Interpreter.

THE COURT: All right, there is no rush.

(Whereupon, the jury entered the courtroom.)

Q Now, you say that they took Justo Quintanilla out of the apartment; is that correct?

A Yes.

Q Who were the Police Officers who took him out of the apartment?

A Mr. Codelia, Mr. Egan and Mr. Viera.

Q What happened to your money?

A Mr. Egan took my money. And the two men who left Mr. Codelia and Mr. Viera, they took it and put it into their pockets.

Q Did you ever see that money again?

A No, never again.

Q So you remained in the apartment; is that correct?

A Yes.

Q Did anybody stay with you?

A Yes. My wife and Mr. McLean and Mr. -- the ugly one that I call, Mr. -- I can't pronounce that.

Q Well, just for the record, I am going to ask you

bed. I slept on the couch. Mr. McLean slept in an armchair. And Mr. Wolff slept on the floor with a gun right here on his chest.

Q Did there come a time when somebody was awakened.

A Yes. The time came at around 5:00 o'clock in the morning. Mr. Codelia arrived with Mr. Viera. And they brought coffee with milk, sandwiches. And they invited everybody for coffee in a very friendly fashion. And they once again searched the apartment.

Q So now, who do we have in the apartment?

A We have Mr. Viera, Mr. Codelia, Mr. McLean and Mr. Wolff.

Q When you say they searched the apartment, did they find anything else in the apartment?

A No. They had already found everything.

Q Now, Lieutenant Egan is no longer in the apartment; is that correct?

A No. He didn't come back to the apartment at all. And I never saw him again, either.

Q Can you tell us who was in charge in the apartment now that -- now that Lieutenant Egan was no longer around?

A Yes.

Q Who was it?

A Mr. McLean.

to take a look at Government's Exhibit 104 in evidence. I ask you to take a look through the book, and please point out the ugly one.

A This one right here.

Q Can you tell us what number that is?

A Number 3.

MR. KAPLAN: For the record, number 3 is Detective Leslie Wolff.

There is no objection.

Q Now, you stayed in the apartment that night; is that correct?

A Yes. All night.

Q With McLean and the ugly one?

A Yes.

Q Were you free to go at any time you wanted?

A No, no, as they were waiting for the other Policemen to arrive so they could take me to the bank to withdraw the money that I had -- that is, my wife had.

Q Was your wife free to go at any time?

A No. Because she was the one whose name the box in the bank was in.

Q Is there any particular instance that you recall that transpired in the apartment that night?

A No. That night my wife slept by herself in the

Q Then what happened?

A Then they ordered us to make our bags with all our clothing. We packed six, seven bags. At around 7:00-o'clock in the morning, more or less -- more or less, they helped my wife and I to take the suitcases down. They put them all into a car. One of the Police Officers drove the car, left it parked on some Avenue in Queens, put a card on it, transferred into another car, and they brought us to Manhattan here.

Q Now, before all this took place, do you recall a phone call being made in the apartment?

A Yes.

Q How did it come about that the phone call was made?

A Mr. Codelia told me that I wanted to talk to Mr. Martinez, and that I should ask him for my papers and the $5,000 that he was holding for me. Mr. Codelia took the phone, dialed the number. When Mr. Martinez was already on the phone, he handed me the telephone so I could talk to Mr. Martinez.

Q Well, had you mentioned anything about Mr. Martinez to Mr. Codelia?

A No.

Q Did you have a conversation with Martinez on the phone?

A Yes.

Q Now, after the conversation, you go to the car; is that correct?

A Yes.

Q And you go to Manhattan?

A Yes, yes. We came to Manhattan. They stopped the car in front of the building where Mr. Martinez worked. And Mr. Codelia said, "Go ahead into the building. You are going to meet Mr. Martinez so that you can take back your documents and your money."

They got out of the car, Mr. Codelia got out. Mr. Viera got out. They went across to the building across the way, and they let me go into the building by myself.

Q Just before you continue --

A I went around in the building --

Q Where was your wife at this time?

A Inside the car with the other Policeman.

Q Who else was in the car besides your wife?

A The two Policemen, who remained in the car with my wife. And two Policemen were in front -- were looking in front of the building when I went into the building where Mr. Martinez works.

Q Let's identify the two Policemen in the car, and the two Policemen who were watching you when you went into the

building.

A The ones who were watching me was Mr. Viera and Mr. Codelia.

Q Where was Viera located?

A The building has these tall pillars at the entrance. And Mr. Codelia was at the other side of the building.

Q And McLean and Wolff were in the car?

A Yes, with my wife.

R2 fls

(continued on next page.)

Q So you went to the building?

A Yes. I went around inside looking for Mr. Martinez. Since he didn't show up, Mr. Martinez, I went across to the front. I talked to Mr. Codelia. I told him Mr. Martinez is not there.

Mr. Codelia went to a telephone booth, called again Mr. Martinez, I assume, and he told me, "Now, go across, go inside because you are going to find him."

I crossed again. Mr. Martinez was coming down the stairs with a carpet. There was a cord across the front of it. And he turned over a bag with the $5,000 in $5 bills, my documents and Justo Quintanilla's.

Q When you say your documents and Mr. Quintanilla's, what was he doing with your documents and Mr. Quintanilla's?

A We had given them to him so that he could arrange again for our immigration card.

Q What documents might those be?

A Passports and the immigration card. Two passports.

Q Do you know if they were visible as you observed this with Mr. Martinez?

A Well, from where they were, no. They could not be seen.

Q So you received the $5,000; is that correct?

A Yes.

Q Do you know if the money was actually in change? Did you describe it to us previously?

A No, no, it was not change, that money.

Q And you proceeded back to the car?

A Yes. I went to the car.

Q Now, to -- you got back into the car. Who was in the car?

A There is my wife, Mr. McClean and Mr. Wolf.

Q The one you described as the ugly one?

A The ugly one, yes. From there I got into the car. Mr. Codelia gets in and Mr. Viera gets in.

Q Where do you proceed to?

THE INTERPRETER: I didn't hear that.

Q Where did you proceed?

A From there we went to the bank. They took me to the bank where the money was put away in my wife's name. We arrived at the bank door. Mr. Codelia told me to tell my wife to go and withdraw the money. My wife got out, went into the bank, withdrew the money, got into the car. And I said to her, "Give me the money."

She gives me, but she doesn't give it all. So then I started counting bill by bill and passing them to Mr. Codelia.

Q Before we continue, do you recall where everyone was located in the car at this time?

A Mr. Codelia was at the door. Mr. McClean in the middle. Mr. Viera at the wheel. And the ugly one in back with myself and my wife.

MR. BRACKLEY: Your Honor, I am going to object to calling the police officer the ugly one. If he will just say that it's Detective Wolff or something like that, but I don't see why he has to refer to him as that way.

I object, even though I don't know who Wolff is. I object to it.

THE WITNESS: It is that I have a tongue ailment. I can t pronounce that name.

MR. BRACKLEY: You have to call --

THE COURT: You have to use the name in Spanish. Give him the translation.

THE INTERPRETER: May I refer to him as Mr. Wolff?

THE COURT: Yourefer to him as Wolff, and he can call him Lobo.

Q What happened in the car?

A When I give the money to Mr. Codelia, he was passing it on to Mr. McClean. Mr. Codelia said, "There

is $30,000 missing here."

And I said to my wife, "Give me all of the money," I said.

The total amount of money was $68,000. I counted another $30,000 and I gave them to Mr. Codelia.

Mr. Codelia passes them on to Mr. McClean. And I -- they leave me with $8,000.

Mr. Codelia says, "You are very lucky that you are keeping some money because we have taken all of the money from all of theChileans that we have found."

Q Then what happened?

A Then they took me to the court in Queens so that I can bail out Mr. Santanda Quintanilla, who was Justo Quintanilla.

(Continued on next page)

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T6 R1

Olate-direct

Q Do you recall in the car Mr. McClean saying something?

A Yes, surely. He spoke in English to Mr. Codelia and I asked him what is he saying. He said he wishes you a Merry Christmas with your children in Chile. And Mr. McClean slaps my hand like that (indicating), and they also told me that I had to leave as soon as Mr. Justo Quintanilla got out because Mr. -- that I had to leave immediately for Miami.

Q They wanted you out of New York; is that right? They wanted you to get out of New York?

A Yes, that we leave immediately after Justo Quintanilla got out.

Q You go to court; is that right?

A We go to court and the judge setd s bail of $5,000 for Jorge Santanda, who was Justo Quintanilla.

Q Did there come a time when bail was set by the judge?

A Yes. And since I -- since they set the bail at $5,000, I cannot act as bondsman.

Q Let me just ask you the question. When you say that you cannot act, were you told this in court?

A No.

Q Did there come a time when you did something

with respect to the bail?

A Yes. I had to get a lawyer to post the bail for Jorge Santanda or Justo Quintanilla. But Mr. Codelia says that across the street there are offices with bail bondsmen. So I asked him to come with me, to please come along with me to go look for one of those bondsmen.

Q What does he say?

A He said no. He refused.

Q Who was present at this conversation?

A Mr. McClean.

Q Just Mr. McClean and Mr. Codelia?

A Mr. Viera was around, in the side, around the court.

Q So then what happened?

A Well, since Mr. Codelia didn't want to come along, Mr. McClean came along. He came with me to an office. We went in and they said no. We went into another office and then the man accepted and charged me $250 as a commission, a percentage for the bail.

Q Did there come a time when Mr. Quintanilla was bailed out?

A Yes. He was released immediately.

Q And this was the day after this particular incident in Queens; is that correct?

Olate-direct

A Yes. Yes, during the day.

Q Do you and Quintanilla and your wife go out by the court house at this point?

A Yes. I waited for him outside. When he got out of the court in Queens, I talked to Justo Quintanilla and I said --

MR. BRACKLEY: Objection.

A (Continuing) The policemen are right there in front of the --

MR. BRACKLEY: Objection.

THE COURT: Excuse me. Is somebody speaking?

MR. BRACKLEY: I have an objection, Judge, if he is talking about a conversation.

THE COURT: It is very difficult to know who is speaking.

MR. BRACKLEY: Sorry, Judge.

THE COURT: What is the obj ection?

MR. BRACKLEY: I believe he is having a conversation with Quintanilla outside the presence of the defendant, Judge.

Q Was this conversation with the defendants or by yourself and Quintanilla?

A No. With the policemen.

Q Whatis said during the course of the conversa-

tion?

A I told them that I was not going to go to Miami because I was not familiar, that I would leave New York to Argentina and then later on to my own country; but by my own means and to please not follow me.

Mr. Codelia, since it was Mr. Codelia who spoke everything with me, said, But you are going to leave today. I said, well, it's practically three o'clock in the afternoon. I don't know whether I'll be able to. I don't know whether I'll be able to get a ticket.

I go to Argentina Airlines to get a ticket but it was impossible to get a ticket until the following day.

Twice they said -- they repeated to me, But you are going to leave the country, and I said well, if I don't leave today, I'll leave tomorrow.

And the following day I left the country, myself and Justo Quintanilla. through Kennedy Airport, under my own name and Mr. Quintanilla's name. We traveled by Argentine Airlines to Buenos Aires and from Buenos Aires I traveled by Alitalia to Chile.

Q Was that the last time that you were in the United States until you were expelled from Chile?

A Yes, sir.

Q When did you come to the United States, when

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(Due to a misunderstanding, the reporter arrived in the courtroom late.)

THE COURT: I am sorry for the delay, ladies and gentlemen.

The reason we don't proceed without a reporter is that you may have some questions during your deliberations and it may be necessary to read back some of the testimony.

The reporting service is normally quite good and prompt, sometimes there are delays.

Proceed.

Swear the witness.

L U I S M A R T I N E Z , called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Martinez, how old are you, sir?

A 32 years old.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes, I do.

Q Mr. Martinez, are you presently incarcerated?

A Yes, I am.

case.

Q Are these folders kept in the normal course of business?

A Yes, they are.

Q I show you what has been previously marked as Government's Exhibit 55 in evidence and ask you if you can identify that document.

A This is a search warrant acquired by Detective Viera for the apartment of Ernie Solomon.

Q Now, prior to the arrest and search of Ernest Solomon's apartment, do you recall what took place in your duties as a police officer on October 27, 1971, with respect to the Solomon case?

A Prior to the arresting or executing of the search warrant on Ernie Solomon, we had executed other search warrants in the apartment of Basil Jones and Philip Denny.

Q Do you recall the address of that apartment?

A I believe it was 601 Albany Avenue.

Q Did there come a time when arrests were made of people in 601 Albany Avenue?

A Yes, sir.

Q Do you recall the names of those people?

A Basil Jones, Philip Denny, I believe, and Andre Pierre and Raymond Ellington were arrested in that building.

Q Did you secure the prisoners at some place in 601 Albany Avenue?

A Yes, we did.

Q Where was that?

A In the apartment of Basil Jones.

Q Do you recall -- by the way, who was supervising this case overall, who would have overall supervision of this case?

A The supervising in this case was that night -- excuse me, Mr. Kaplan, are you talking about the arrest that night?

Q I am talking about the overall, the overall case.

A It was supervised by the Kings County District Attorney's office.

Q Was that Assistant District Attorney Mr. Hersey who was supervising the case?

A Yes, it was.

Q And is this because a police officer was involved in the case?

A No, not really.

Q Is that one of the reasons?

A It is one of the reasons, yes.

Q Did there come a time when you arrested Ernest

Solomon, you and your brother police officers?

A Yes, we did.

Q Do you recall where the arrest took place?

A The arrest took place at Midwood Lounge, it is located on Albany Avenue.

Q Is that a bar?

A That is a bar.

Q Do you recall where Mr. Solomon was taken after his arrest at the Midwood Bar?

A First he was taken to 601 Albany, Basil Jones' apartment, and afterwards he was taken over to his own apartment at 91 Ocean Parkway.

Q He was taken to 91 Ocean Parkway, that was his apartment?

A Yes, sir.

Q Was he taken there pursuant to the search warrant?

A Yes, sir, he was.

Q Who were the officers who took him to 91 Ocean Parkway?

A Myself, Detective McClean, Detective Viera, Detective Codelia, and Sergeant Stefania.

Q Did there come a time when a search was made of the apartment of Mr. Solomon?

A Yes, there was.

Q Who conducted the search?

A Myself, Detective McClean, Detective Viera, Detective Codelia, and Sergeant Stefania.

Q What if anything was disclosed by the search of the apartment?

A We found an automatic and some United States currency.

Q When you say automatic --

A Automatic pistol.

Q You mean a pistol?

A Yes.

Q Do you recall how the currency was found, where it was found in?

A It was a brown -- excuse me, it was found in a small leather case, a black leather case.

Q Just like a shaving bag or something like that?

A Yes, one of those shaving bags.

Q Do you recall who was the police officer who found the money?

A Detective McClean.

Q Do you recall where in the apartment the money was found?

A In the bedroom.

Q After the money was found, do you recall what happened?

A I remember the superintendent was there, he came up through -- we called him up because we broke the door in the apartment.

Q Was there any reason why you broke the door of the apartment?

A Ernie Solomon disclosed he didn't have the keys to the door at the time.

Q What happened?

A So some money was given to the superintendent who fixed the door, and after that we left him, we went back to the location at 601 Albany Avenue.

Q Do you recall the incidents that took place regarding the money in the apartment?

A No, I don't.

Q Do you recall seeing any money counted?

A There was some money counted and some of it -- some of it was given to the superintendent to repair the door.

Q Was there a large sum of money in the bag?

A Yes, there was.

Q Do you recall how much, do you have any idea how much?

A No, I have no idea how much money.

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Q Who was in possession of the money?

A Detective McClean.

Q Did any conversation take place in the apartment which you yourself observed?

A Yes.

MR. LAZARUS: I am going to object to the form of that question, your Honor.

THE COURT: I can't hear you.

MR. LAZARUS: I would like to know who he is referring to with reference to the conversation, who it is between specifically.

THE COURT: Yes, I think that should be done.

Q Will you specify that, please.

THE COURT: Excuse me. Try to specify who was present during the conversations.

MR. KAPLAN: That is what I am trying to elicit through the witness.

THE COURT: Very good.

Q Did there come a time when a conversation took place in the apartment which you yourself observed?

A Yes, there did.

Q Who were the parties to this conversation?

A Detective McClean, Sergeant Stefania, Ernie Solomon and Ramon Viera.

Q Detective Viera?

A Yes, sir.

Q How long a period of time did they have this conversation?

A Five, ten minutes the most.

Q Do you recall if Mr. Solomon was given anything at any time?

A Yes, some of the money that was found in the apartment was given back to Mr. Solomon.

Q Do you recall how much?

A No, I have no idea.

Q Is this in accordance or contrary to the police procedure?

MR. WALL: I will object to that.

THE COURT: On what grounds?

MR. WALL: On the ground, number one, that the best evidence would be the police manual.

THE COURT: Overruled on that ground.

MR. WALL: May I ask at this time that the jury be instructed that inasmuch as Mr. Codelia has not been mentioned as present in this testimony that it is not binding upon him and not relevant as to him, at this moment, at least?

Q Was Mr. Codelia in the apartment --

MR. KAPLAN: He is coming up.

THE CLERK: Mr. Martinez, you are still under oath.

THE WITNESS: Yes, sir.

THE COURT: Please be seated.

L U I S M A R T I N E Z, having been previously sworn, continued to testify as follows:

DIRECT EXAMINATION

BY MR. KAPLAN (Cont'd):

Q Mr. Martinez, directing your attention again to the incident in Mr. Solomon's apartment, can you tell us who was present?

A Myself, Detective Codelia, Detective McClean, Detective Viera and Sergeant Stefania.

Q And you stated that you observed a conversation; is that correct?

A That is correct.

Q Who was present at the conversation?

A Sergeant Stefania, Detective McClean, Detective Viera.

Q Did you happen to overhear any of the conversation?

A No, sir, I did not.

Q For how long a period of time did you observe

the conversation to be taking place?

A Anywheres between five and ten minutes.

Q Did there come a time when Mr. Solomon was removed from the apartment -- excuse me -- from the apartment by the police officers?

A Yes.

Q And was he taken to the precinct?

A No, we went over to 601 Albany Avenue first.

Q Did there come a time when he was booked?

A Yes, sir, he was.

Q Was this in the early morning hours, moving into the morning hours of October 27, 1971?

A Yes, the following day.

Q Do you recall if the arrest initially took place about one o'clock or two o'clock in the morning of October 27th?

A It was very late at night, I really can't recall.

Q Late at night or early in the morning; is that correct?

A That is correct.

Q Can you tell us what if anything else happened with respect to your involvement in this case?

A I made one of the arrests on it, I arrested

Philip Denny myself.

Q Did there come a time when you met with any of the police officers of the team after the arrest was made?

A We all went back to the Kings County District Attorney's office.

Q Did there come a time when you had a meeting there?

A Yes, I did.

Q With whom?

A Detective McClean.

Q What if anything happened at the meeting?

A Detective Mc Clean ~~handed~~ me that black leather case with some money in it.

Q How much money?

A $500.

Q What if anything did he say?

A There was nothing said, just the valise was given to me.

Q I show you what has been marked as Government's Exhibit 57 in evidence and ask you if you can identify these documents.

A This is our property clerk's vouchers made out by Detective Codella, of money taken from Ernie Solomon.

Q Will you explain to the jury, please, what you mean by property clerk's vouchers?

A This is money that was vouchered with the Police Department.

Q And can you tell us how much money was vouchered with the Police Department on this occasion?

A I believe the total was $4,125.

Q Describe the vouchering procedure, if you will.

A Any monies seized from any narcotic dealers, that would have to be vouchered separately; each dollar bill, serial number, would be put into the property clerk's vouchers in different denominations, five, ten, twenty and so on.

MR. KAPLAN: I ask that this document be marked for identification.

THE CLERK: Document marked as Government's Exhibit 83 for identification.

(So marked.)

Q I show you what has been marked as Government's Exhibit 83 for identification and ask you to identify it.

A This is a P.D. 49 mailed by Detective Codelia to the commanding officer of the Narcotics Division.

Q Is that a record kept in the regular course of business?

A Yes.

Q Directing your attention specifically to the night of October 21, 1971.

Did there come a time when you and fellow officers instituted actual surveillance of the premises involved in 601 Albany Avenue?

A Yes.

Q What did you do?

A I was present with the team.

We had a couple of locations under surveillance that evening. We had search warrants and we were prepared to arrest a number of people involved in high-level narcotic deals.

Q How many other police officers, other than the team, were present?

A Offhand, I would say six or eight and then as the night went on, more -- more officers arrived.

Q This was a pretty big case; is that correct?

A Yes.

Q Did there come a time when arrests were made at 601 Albany Avenue?

A Yes.

Q Do you recall who was arrested?

A Basil Jones was arrested. Ellington and another individual were arrested. And later on a few

other people were arrested.

Q Did there come a time when an arrest was made of one Ernest Solomon?

A Yes.

Q Do you recall where the arrest was made?

A It was made in a bar down the street from the apartment building on Albany Avenue.

Q Had a search warrant been obtained with respect to the premises of Mr. Solomon?

A For his residence, yes.

Q After he was arrested, where, if you can recall, was Mr. Solomon taken?

A After he was arrested, we -- we went back to the apartment building at 601 Albany Avenue, after. And from here we took Solomon to his apartment on Eastern Parkway.

Q Was that Eastern Parkway or Ocean Parkway?

A Excuse me. Ocean Parkway.

Q When you say you went to Mr. Solomon's apartment, did you go with other police officers?

A Yes.

Q Who were the other police officers?

A Dets. McClean, Viera, Codelia and Patrolman Martinez.

Q What happened when you arrived at Mr. Solomon's apartment, if you can recall?

A We entered the apartment. I don't -- I don't remember if Solomon had the key or if we had to get the Super to let us in.

nce we got in the apartment -- because I remember the Super was there for a short while -- once we got in the apartment, we started searching.

(continued next page.)

2pm4 GRnc

DIRECT EXAMINATION

BY MR. KAPLAN: (Cont.)

Q When you say we started searching, who started searching?

A All the officers were searching, in different rooms, different locations.

Q What, if anything, happened?

A McClean and Viera got my attention and said they had fourd a small black leather -- looked like a toilet ket, with a large amount of money in it.

A gun was found and I don't recall just where the gun was found, if it was with the money or if it was found in another location.

Q They showed you the money?

A Yes.

Q Then what happened?

A We had a conversation with Solomon.

Q When you say "we had a conversation with Solomon," who was it, exactly, that had the conversation with Solomon?

A McClean, Viera and myself.

Martinez and Codelia were nearby. I don't know where they were. I don't recall if they were part of the conversation, but--

Q Who was doing the talking in this conversation?

A I was talking. Solomon did some talking. McClean did some talking and Viera. The four of us were engaged in--

Q Do you recall what was said during the course of this conversation?

A Well, in substance, Solomon wanted to keep the money.

And I told him, "No, we are going to seize it."

And he said something like, "Well, you take some and I'll keep some."

So we discussed it and decided we'd give him some money and each take a share of the money and I said, we'd voucher the remainer.

Q Do you recall how much was given to him?

A I don't recall exactly but it was in the neighborhood of maybe eight hundred, a thousand dollars. Between seven hundred and a thousand, I'd say.

Q Was it given back to him in the presence of yourself, Viera, McClean?

A I -- I don't recall if we gave it to him then or if it was given to him just before we left the

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apartment.

Q Do you recall anything else that transpired during the course of the conversation or anything that you said or that Mr. McClean said or Mr. Viera said or Mr. Solomon said?

A No specifics, no.

Q But you did give him some money back?

A Yes. He was given some money that night because he said he wanted to pay his rent and I believe he left some of it with the superintendent.

Q Do you recall if the door was smashed in?

A No, I -- I don't think it was.

As I recall, we got in with a key. If Solomon didn't have it, I think that's why the Super was there.

Q When you gave him the money back, was this pursuant or contrary to proper police procedure?

A Contrary.

Q Then what did you do?

A Then we returned to -- well, I don't know if we stopped by the apartment but, ultimately, we went to the Brooklyn District Attorney's office.

Q By the way, was the money counted at any time in the apartment?

A It wasn't all counted in the apartment.

Q Was some of it counted?

A Some was counted. The amount that was left with Solomon.

I don't recall anyone counting the rest of the money.

Q Do you recall who had the remainder of the money?

A I believe Viera held on to the bag with the money.

Q Did there come a time when you proceeded to 601 Albany Avenue?

A After we left that apartment, yes.

Q What happened at 601 Albany Avenue?

A There was a large number of police officers at the scene then and I spoke to Capt. O'Brien and the Commanding Officer of the Narcotic Division and we all proceeded to the Brooklyn District Attorney's office.

Q What happened at the Brooklyn District Attorney's office?

A We counted out the money that we were going to voucher.

We had already take -- I think, as I said, I think Viera was holding the money and the amount that

we were going to divide was already taken out.

We--

Q You have to explain this to the jury:

How was it decided that an amount was going to be taken out and an amount was going to be vouchered?

A We decided that in the apartment, when we gave Solomon a share.

Q Was there a conversation that took place between yourself, Viera nad McClean?

A Right.

Q What --

A In the apartment.

Q What was the substance of the conversation/

A That we were going to voucher some of the money and divide some amongst ourselves.

Q Do you recall how much you decided to voucher?

A It was approximately $000, I believe. In the neighborhood of $4000.

Q Do you recall how much was left after the vouchering?

A No, because I didn't see the entire amount that we were going to divide.

I ultimately got a share of five to six hundred. Maybe seven hundred dollars'

Q Do you recall that it was counted by any particular person in the apartment or separated out at any time?

A In the -- I don't think we made a total count. I don't recall. It may have been when I wasn't present.

If I was in one fo the other rooms -- but I don't recall the total amount being totalled in the apartment.

MR. WALL: I will ask that "May have been" be stricken, your Honor.

THE CORUT: What?

MR. WALL: That what "May have been" while he was not present be stricken.

THE COURT: Yes.

MR. WALL: Thank you.

(continued next page.)

DIRECT EXAMINATION

2pm5 BY MR. KAPLAN: (Cont.)

Q By the way, Mr. Stefania, was this money that you appropriated a bribe that Solomon paid you?

A No.

Q You just had taken the money for yourself?

A Yes.

Q And the other police officers; is that correct?

A That is correct.

Q Do you recall receiving a share of that money that was taken and not vouchered?

A The next morning -- this operation went through the night and the next morning somewhere in the vicinity of the Brooklyn District Attorney's office, after we had left, I believe it was Viera handed me my share, which came to five or seven hundred dollars.

Q You have no specific recollection of the amount of money?

Is that correct?

A No. It -- it was in the -- roughly that amount, five to seven hundred dollars, I remember.

Q I direct your attention to early Novmeber, 1971.

Q Prior to the time that you received this $500 from Mr. McClean in this case, had you previously received money in cases involving other seizures from narcotics dealers?

A Yes, I did.

Q On how many other occasions?

A About three or four different occasions.

Q Were these after money had been seized and you received a share of the money; is that correct?

A That is correct.

Q I show you Government's Exhibit 56 in evidence and ask you to identify that.

A This is the arrest report made up by Detective Codelia of Ernie Solomon.

Q Now, Mr. Martinez, I direct your attention to early November 1971.

Do you recall working with the same team during this period of time?

A Yes, I do.

Q Do you recall an investigation being conducted with respect to individuals known as John Grimke and Peter Mirabile?

A Yes, I do.

Q Who was in charge of this investigation?

A Detective McLean.

Q Who else was working on this investigation?

A Myself, Detective Rodelia and Detective Viera.

Q Do you recall when this investigation commenced?

A I didn't hear the question.

Q Do you recall when this investigation commenced?

A No, I don't, I can't recall the exact dates.

MR. KAPLAN: May we have this book marked for identification.

If there is no objection, can it be marked in evidence?

MR. WALL: We would like to look at it.

THE COURT: Mark it for identification.

MR. WALL: We would like to see its relevancy.

THE COURT: One of the reasons the numbers are so high, ladies and gentlemen, is, as you have seen, that all of the exhibits in order to expedite the trial, the attorneys beforehand with the clerk met and many of these documents had the number assigned to them, and also all the attorneys could look at them in advance.

THE CLERK: Government's Exhibit 84 for

identification.

(So marked.)

THE COURT: During the deliberations you will be entitled to see any of these that you wish to see.

Q Now, Mr. Martinez, I refer your attention specifically to the FOD book which has been marked as Government's Exhibit 84 for identification, and concerning the dates commencing on or about November 3, 1971, starting with page 6 in the FOD book, I will ask you if you were assigned to the team which had as its men McClean, Viera and Codelia.

A Yes.

Q Did there come a time when you arrested Mr. Grimke and Mr. Mirabile on November 13, 1971?

A Yes, we did.

Q I refer your attention specifically to page 56, which is Saturday, November 13, 1971, and ask you to take a look at team five.

Does that reflect the police officers that were working on the case?

A Yes, it does.

Q Who were they?

A McClean, Viera, Codelia and myself.

MR. KAPLAN: At this time, your Honor, I will offer the respective pages in evidence.

THE COURT: Show it to counsel.

MR. WALL: I have no objection to page 56, but I don't know as yet the purpose of page six.

THE COURT: What is the purpose of page six?

MR. KAPLAN: To show that team was together on that date and working on that case, as will be testified to by the witness.

MR. WALL: No objection.

THE COURT: It is admitted.

THE CLERK: Page 56 is marked as Government's Exhibit 85 in evidence.

(So marked.)

THE COURT: Put it on the outside of the book.

THE CLERK: Do you want page six marked in evidence?

MR. KAPLAN: It doesn't make any difference, just one tab.

(The tab was placed on the outside of the FOD book.)

MR. KAPLAN: May we have this document marked for identification as the STU file?

THE CLERK: Files marked Government's Exhibit

86 for identification.

xxx (So marked.)

BY MR. KAPLAN:

Q Mr. Martinez, I show you what has been marked as Government's Exhibit 86 for identification and ask you if you can identify that particular case folder.

A Yes, I do.

Q And under whose name was that case folder?

A It is under my name.

Q You said that Detective McClean was in charge of that case; is that correct?

A Yes, I did.

Q Can you tell us how it came about that you were assigned that particular case folder?

A At this time SIU had decided to get rid of all of what was known as white shield policemen or detectives working in SIU; in other words that meant that all patrolmen were going to be sent back to the field, and it was decided that I should take the case and have an open case in the files of SIU when the transfers came about so that I would be able to stay with the Department under the SIU.

Q Who made that determination?

A Detective McClean.

Q Now, you took the case folder out in your name?

is that correct?

A Yes, I did.

Q Was this the first time you had ever had a case folder in your name?

A That is the very first time.

Q Did there come a time when an investigation was commenced regarding Mr. Grimke?

A Yes, there was.

Q Do you know what if anything was done?

A Excuse me.

Q What if anything was done with respect to that investigation?

A There was an illegal wiretap installed at the Grimke residence.

THE COURT: At where?

THE WITNESS: At the Grimke residence.

Q Did there come a time when you had a conversation with other police officers in the team with respect to wiretapping?

A Yes.

Q With whom did you have the conversation?

A With all the members of the team.

Q Detective McClean?

A Detective McClean, Detective Viera.

Q And Detective Codelia?

A That is correct.

Q Did Sergeant Stefania know about this particular incident?

A No, sir.

Q What if anything was said during the course of this conversation by yourself and the other detectives?

A The only thing that would be discussed was whatever was happening during the course of the day about any conversations coming in on the wire.

Q Had you yourself been involved in illegal wiretaps prior to this particular wiretap?

A Yes, I was

Q On how many occasions?

A Approximately three other illegal wiretaps.

Q Did there come a time when yourself and other police officers went to install wiretapping equipment at the Grimke residence?

A Yes, we did.

Q Who was the other police officer or police officers?

A At the Grimke location it was installed by myself and Detective Codelia.

MR. KAPLAN: I ask that these pictures be

marked for identification. Mark them as A, B, C and D.

THE COURT: Mark them individually?

MR. KAPLAN: A, B, C, yes.

THE CLERK: Nine photos marked as Government's Exhibits 87, 87-A through 87-H, inclusive, for identification.

(So marked.)

BY MR. KAPLAN:

Q Mr. Martinez, I show you what has been marked as Government's Exhibit 87 for identification and ask you if that is a fair and accurate representation of the front entrance to the Grimke residence.

A Yes, it does look like it.

Q Another picture marked Government's Exhibit 87-A for identification, and I ask you if that is a fair and accurate representation of the residence.

A Yes, it is.

Q And Government's Exhibit 87-B for identification; I ask you if that is a fair and accurate representation of the stairs leading to the back of the residence.

A Yes, it is.

Q Government's Exhibit 87-C for identification, I ask you if that is a fair and accurate representation of

the courtyard in back of the apartment house.

A Yes, it is.

Q 87-D for identification, I ask you if that is a fair and accurate representation of the stairs leading down to a room in the cellar.

A Yes, it is.

Q 87-E for identification, I ask you if that is a fair and accurate representation of a hallway in back of the courtyard relative to a certain room in the back of the Grimke residence.

A Yes, it is.

Q With respect to Government's Exhibit 87-F and 87-G, I ask you what those two pictures depict.

A What was that?

Q I ask you with respect to those two pictures if they are a fair and accurate representation of some pipes in a room in the back of the Grimke residence.

A Yes, they are.

Q And with respect to Government's Exhibit 87-H for identification, is that a fair and accurate representation of a telephone box in the room in back of the Grimke residence?

A Yes, it is.

MR. KAPLAN: I offer these photos in evidence.

MR. WALL: No objection.

THE COURT: Mark them.

MR. BRACKLEY: Can I see those for a second?

THE COURT: Of course.

(Mr. Brackley looked at the exhibit and handed it back to Mr. Kaplan.)

MR. KAPLAN: I offer it in evidence.

THE CLERK: Government's Exhibits 87 and 87-A through 87-H inclusive, for identification, marked in evidence.

(So marked.)

BY MR. KAPLAN:

Q Now, Mr. Martinez, I show you the photos just marked in evidence and ask you to refer to them and explain to the jury exactly how it was that you and Mr. Codelia installed the illegal wiretap on the Grimke phone.

A On photograph 9 is --

Q 87-H.

A 87-H, it is a picture of a box known as a junction box, and in this junction box there would be several numbers, several telephone numbers appearing on it for the apartments in that residence; it could cover anywheres within two to three blocks, there are sets of telephone numbers, and for each telephone number is what is known as one pair

designated for it, and by the simple process of elimination, usually when a defendant is not home, it is very simple to pick out which pair belongs to the apartment that you want to put the wiretap on.

Q Now, when you attach the pairs to the telephone box, to what was that in turn attached?

A Once you have located the correct pairs, you attach to it a portable tape recorder with an automatic starter and an automatic shutoff.

Q Explain to the jury exactly what would happen with respect to these tape recorders and the automatic starters, what would be the procedure?

A Once the machine has been installed, as soon as the defendant picks up the phone, whether it is incoming or outgoing telephone calls, the tape recorder would automatically activate itself and record all conversations.

Q Now, with respect to these pictures, Mr. Martinez, can you tell us if this was a private residence of Mr. Grimke or whether -- where was this telephone box, where was that located?

A This is located in the rear of his residence and in the basement.

Q Are there other apartments surrounding his apartment?

A Yes, there is.

Q And are there other telephone numbers for this box?

A Yes, there are.

Q What was the access to this particular room?

A Anybody could go into it, it is open to the public.

Q With respect to Government's Exhibits 87-C and 87-F in evidence, will you please explain the relationship of the pipes to the room in question?

A These pipes -- once we found the correct pairs, we ran a wire so that it wasn't too visible and the machine was hidden on top of the pipes.

Q Would that be up above?

A Yes, above.

Q On the ceiling?

A Up in -- up on the ceiling.

MR. KAPLAN: May I show the pictures to the jury at this time, your Honor?

THE COURT: Yes.

(Mr. Kaplan then handed the pictures to a juror.)

Q How long a period of time was the tape recorder--

MR. BRACKLEY: Your Honor, I would have to

his asking questions while the jury is looking at the exhibits.

THE COURT: What?

MR. BRACKLEY: Your Honor, I would have to object when the jury is looking at exhibits, I have no objection to the jury looking at the exhibits during a recess or something, but I will object while he is asking questions.

THE COURT: Is that an inappropriate procedure to which the other defendants don't object?

I don't like these large breaks in time.

Will you object to the jury taking these into the jury room?

MR. WALL: I would not.

THE COURT: All right.

MR. WALL: Provided, of course, there is no discussion as to them.

THE COURT: You understand that, ladies and gentlemen. We will do it that way.

Take them back, please.

MR. BRACKLEY: Excuse me.

(Kaplan then retrieved the exhibits.)

BY MR. KAPLAN:

Q Now, Mr. Martinez, for how long a period of

time did the tape recorder monitor the conversations that took place in the Grimke residence?

A Approximately a week to ten days.

Q And is this prior to the time that you arrested Mr. Grimke?

A Yes, it is.

Q And you arrested Mr. Grimke approximately what date, if you recall?

A I believe it was November 13.

Q 1971?

A 1971, yes.

Q Now, when you say this was an illegal wiretap, were you at the time familiar with the laws governing the instituting of wiretaps?

A Yes, I was.

Q Will you tell us what was required for institution of a wiretap on any phone anywhere?

A Usually you would have to have what is known as a reliable informant, that is giving you previous cases, and once you have him and he gives you information on a particular party that is supposed to be dealing in heavy narcotic trafficking, you can take his credibility into court and try and get what is an ex parte order, an order which is called a wiretap order.

Q You have to file an affidavit; isn't that correct?

A That is correct.

(Continued on next page.)

Q And you get a court order?

A Yes, we do.

Q And you get a warrant?

A Yes, we do.

Q Was there any affidavit and court order and warrant for this wiretap in this case?

A No, there was not.

Q Now, can you tell us on how many occasions, if you recall, the tapes were monitored at the Grimke residence?

A The tapes would be monitored daily.

Q For how long a period of time did you stay at the wiretap site to monitor the tapes?

A It depends. It could vary in times. It depends on what you listen to and what has been taped, what particular conversation.

Q Generally speaking, could you give us an approximation of how much time would be required listening to the tapes?

A Half an hour to 45 minutes.

Q Can you tell us who monitored the tapes other than yourself with respect to the Grimke wiretap?

A It would be monitored by myself but we would bring the tapes down to the automobile and have a portable

tape player and listen to it in the car.

Q When you say, "we," whom do you mean?

A All the members of the team.

Q Detective McClean?

A Yes.

Q Detective Viera?

A Yes.

Q Detective Codelia?

A Yes.

Q Did you have discussions with them concerning what was on the tapes?

A Yes. We would always try to determine what they are trying to say, talking in riddles or a legit conversation that they had.

Q Did Mr. McClean, Mr. Viera and Mr. Codelia know, at the time, that there was no court order and no warrant for this particular wiretap?

MR. WALL: Objection.

It calls for the operation of someone else's mind, your Honor.

THE COURT: Well, ask him about any conversations or other indicia.

Q Did you have any conversations relative to this particular wiretap?

A Yes, we did.

Q Based upon your experience, do you know if Detective McClean, Detective Viera and Detective Codelia are aware of the requirements with respect to the installation of wiretaps?

A Yes, they are aware.

Q Based upon your knowledge of this case and your conversations with the defendants was there any --

MR. KAPLAN: Withdrawn.

Q Based upon your knowledge of this case and your conversations with the defendants --

MR. LAZARUS: Objection to conversations with the defendants.

Can we have a conversation with a particular person? Who the conversation was with, where it took place and who, if anybody else was present?

THE COURT: Try to be as specific as you can.

Q Initially, when this equipment was inst lled did you have a conversation with the three defendants?

A Yes, I did.

Q And can you tell us the substance of the conversation?

A We would only discuss whatever was on the tapes.

Q Prior to the installation of the tapes do you

recall a conversation which caused you and Mr. Codelia to install the equipment?

A Yes.

Q What was the substance of that conversation?

A Well, I was -- actually, we discussed that we felt that Vito Mirabile was dealing in very hard drugs, that he was one of the main individuals.

Q What if anything was decided after this conversation?

A It was decided to install a wiretap.

Q At the time, was it clear from the conversation that there was no court order, that there were no warrants for illegal wiretaps?

MR. WALL: Objection to the question in its present form as calling for a conclusion rather than giving the specifics of the conversation.

THE COURT: Ask him whether a court order or any other of these matters were mentioned during the conversation.

Q Was a court order mentioned or an affidavit mentioned with respect to installing this equipment?

A No, there was not.

Q Do you know if on other occasions the members of this team had gotten court orders for wiretaps?

A Yes.

Q And do you happen to know if a number of other detectives in SIU, all the officers, were familiar with the procedure in obtaining wiretaps?

A Yes, they were.

Q On the Solomon case was there a wiretap?

A There was.

Q In that case was a court order secured?

A Yes, there was.

Q In that case was the overall --

MR. KAPLAN: Withdrawn.

Q In that case you testified previously that Mr. Hersey had jurisdiction of that case; is that correct?

A That is correct.

Q That he was the Chief of the Narcotics Bureau of the DEA's office?

A That is correct.

Q I show you what has been marked as Government Exhibit 47 in Evidence and I ask you to identify this particular book.

A This is a book -- well, a record kept by the SIU office of all legal wiretaps in operation at any one particular time.

Q Well, when you say "legal wiretaps," illegal

wiretaps were not entered in the books?

A No.

Q Was that the record kept in the normal course of business of SIU concerning the legal installations of wiretaps?

A Yes.

Q Have you had occasion in the past to look through this book?

A Yes, I did.

Q I direct your attention again to look through the book and determine whether there was any illegal wiretap entered in this book during the regular course of business.

A We are talking about this --

Q The Grimke wiretap.

A No, sir. No, there isn't.

Q Can you tell us who decided on what occasions you were to visit the wiretap site?

A There was no decision made as to when. It was normal that you would visit the locations every day.

Q On how many occasions would you say that Detective McClean, Detective Viera and Detective Codelia visited the location?

A I would have to say daily, also.

Q As a result of the information received from the

wiretaps --

MR. KAPLAN:

Q Did you receive any information from the wiretaps?

A Yes, we did.

Q Did you hear conversations between Grimke and other people that were transcribed on the tapes?

A Yes.

Q What if anything was done as a result of the information you received?

A A search warrant was obtained.

Q In the normal course of police business how would one obtain a search warrant?

A With a reliable informant, information received in the past from this informant and knowing that he is a reliable informant.

Q Is an affidavit required?

A Yes, it is.

Q I show you what has been marked as Government Exhibit 48 in Evidence and ask you to explain this particular document to the members of the jury.

MR. WALL: May I understand that this has been marked in Evidence?

THE COURT: That is what my sheet shows.

MR. LAZARUS: At the time that was being marked

in evidence it was made clear on the record that it was subject to any objections we might have here at trial and I'd like to have an opportunity to see those items before they go in because we made it quite clear on the record.

THE COURT: If you want to object now, of course you may do so.

Look at the document.

(Document handed to defense counsel.)

MR. LAZARUS: I just want an opportunity when these things go in to know what we are dealing with.

(Pause.)

MR. WALL: I have no objection to it.

THE COURT: Mr. Kaplan, I take it you are going to go some time with this witness?

MR. KAPLAN: Yes.

THE COURT: I have another case I must hear at 3:15 so we have to break by 3:15. Arrange your examination so that it is at an appropriate point.

MR. KAPLAN: Very well, your Honor.

THE COURT: There is no objection. You may continue.

Q Referring to Government Exhibit 48 in Evidence, Mr. Martinez, please explain to the jury what that document

is.

A This is supposed to be an affidavit made out and it is supposed to be between the informant and the person who the search warrant is going to be acquired for.

Q In fact, it is an affidavit for a search warrant?

A Yes.

Q At the premises of Grimke's house in Queens and Mirabile's house in Massapequa?

A That is correct.

Q Can you tell the jury who signed that search warrant -- excuse me -- that affidavit?

A There is no signature on here.

Q Well, what name appears on the bottom of the bottom of the affidavit?

A It has no name.

Q Well, at the top of the affidavit, Mr. Martinez, there is a name.

A Oh, yes. It's under my name.

Q Luis Martinez?

A Luis Martinez.

Q In fact, is it fair to say that every document in this particular file that was assigned to you bears your name?

A Yes, it does.

Q Mr. Martinez, can you tell us who prepared this affidavit?

A Detective McClean.

Q Who was present when the affidavit was prepared?

A Myself and Detective McClean.

Q Referring to the affidavit, it states in the affidavit that a confidential informant provided that information; is that correct?

A That is correct.

Q Did a confidential informant provide that information?

A No, sir.

Q Where did the information come from?

A From the illegal wire.

Q In fact, did you meet with a confidential informant with respect to this case?

A No, sir.

(Continued on next page.)

Q I show you Government's Exhibit 49 in evidence and ask you to describe that document to the jury.

THE COURT: If you would like to see any of this, just so indicate, on behalf of the defendants.

A It is a UF 49, stating by me that I had met with a reliable informant No. 2990.

Q Did you ever meet at any time with any confidential informant?

A No.

Q Do you know an informant by the name of 2990?

A No.

Q Did you have any informant when you were employed at SIU?

A No.

Q Did Detective McClean, Detective Viera and Detective Codelia have informants working for them at SIU?

A Yes.

Q You never met with any?

A No.

Q How was this particular memorandum prepared -- on the basis of what information?

A It states, "Having met with informant No. 2990" --

Q Can you tell us on what information this was

prepared? In other words, you say that you never met with an informant. Can you tell us if this document, which bears your name, was drawn by another member of the team?

A Yes, it was.

Q By whom?

A Detective McClean.

Q Did there come a time when a warrant was gotten based upon the affidavit?

A Yes, there was.

Q Did there come a time when Grimke was arrested on November 13, 1971?

A Yes, he was.

Q Who was present at the arrest?

A Myself, Detective Odelia, Detective McClean, Detective Viera and Sergeant Stefania.

Q Was Sergeant Stefania aware of what had preceded with respect to the affidavit and the wiretap?

A No, sir.

Q I show you Government's Exhibit 50 in evidence and I ask you to describe this document to the jury.

A This is an arrest report made out by myself, Luis Martinez on the arrest of John Grimke.

Q You had occasion to arrest Grimke; is that correct?

A That is correct.

Q What if anything was disclosed after a search of his premises, after his arrest?

A He was in possession of mixing material known as manite.

Q What if anything was done after he was arrested and the materials were secured?

A He was driven along with us over to 68 Massapequa Avenue, the Mirabile residence.

Q When you say "He was driven over" how many cars were used in transporting Mr. Grimke to the Mirabile residence?

A Two cars.

Q Do you recall who owned the two particular cars in question or who was driving the two cars?

A One of the cars was Detective McClean's car and in that car was Detective McClean, Detective Viera, and Sergeant Stefania.

The other car belonged to John Gremke and in it were myself, Detective Codelia and John Grimke.

Q So you went in two cars?

A That is correct.

Q Did there come a time when you arrived at Mirabile's residence?

A Yes, we did.

Q Do you recall if that was late at night on November 13th?

A Yes, it was late at night.

MR. WALL: I am going to object to leading when we get to areas that may be important.

Q Did there come a time when the police officers together with Grimke arrived at Mirabile's residence?

A Yes.

Q Do you recall the address of the residence?

A 68 Massapequa Avenue in Massapequa.

Q Did there come a time when a search warrant was executed at the Mirabile residence?

A Yes, there was.

Q Was a search made of the premises?

A Yes, there was.

Q Please describe to the jury that search that was made at the Mirabile residence?

A We had a search warrant for the residence and one of his cars.

In his residence the only thing found was a loaded .38 revolver.

Q Was Mr. Mirabile home?

A Yes, he was.

Q Do you remember who else was home?

A Mr. Mirabile's wife, I believe his mother-in-law, John Grimke, Mr. Grimke's wife and all the members of the team.

Q Did there come a time when a search was made of a car?

A Yes, there was.

Q Please describe to us the circumstances surrounding the search of the car?

A We asked Mr. Mirabile to give us the keys to the automobile.

Q When you say "we asked," who are we talking about -- who was present?

A Detective McClean, Detective Viera, Detective Codelia, Sergeant Stefania and myself.

Q Who was in charge of this case so far as the operations and telling everybody what to do?

A Detective McClean.

Q Tell us what happened.

A The car was open and he claimed that he did not know where the trunk keys were. So, we told him that if he didn't give us the keys we were going to break into the trunk. He still stated he didn't know where the keys were.

Q What type of car was this?

A It was a Cadillac. I don't know the year.

He never produced the keys to the car so we broke the trunk lid and inside the trunk we found a valise with some narcotics and some U.S. currency.

Q When you say "some narcotics," do you recall what type of narcotics?

A A few ounces of heroin.

Q Do you recall how much money was found in the briefcase or the attache case?

A No, I don't.

Q Who took custody of the attache case containing the money?

A Detective McClean.

MR. KAPLAN: I think this might be an appropriate time, your Honor.

THE COURT: We will start at ten o'clock Monday morning, ladies and gentlemen.

Again, I caution you don't read any newspapers, don't watch the TV news programs or radio, don't listen to any radio and don't discuss this matter with anyone.

Enjoy your weekend and be back promptly at ten o'clock Monday. Good night.

the documents.

(Pause.)

(Mr. Wall is now in the courtroom.)

THE COURT: Call the witness, please.

MR. WALL: I apologize, your Honor, for being late.

L U I S M A R T I N E Z , resumed the stand and further testified as follows:

THE CLERK: Mr. Martinez, you have been previously sworn and you are still under oath.

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. KAPLAN (Continuing):

Q Mr. Martinez, when we adjourned on Friday we were talking about the search and arrest concerning Mr. Mirabile in Massapequa, do you remember that?

A Yes.

MR. KAPLAN: I ask this be marked for identification?

THE CLERK: Document marked as Government's Exhibit 88 for identification.

(So marked.)

Q I show you what has been marked Government's Exhibit 88 for identification and ask you if you can identify that document.

A Yes sir, a search warrant for the residence of John Grimkie and Vito Mirabile.

Q Was that the search warrant obtained on the affidavit you previously testified about?

A Yes.

MR. KAPLAN: I offer this in evidence.

MR. LAZARUS: No objection.

THE COURT: Mark it.

THE CLERK: Government's Exhibit 88 for identification marked in evidence.

(So marked in evidence.)

Q Mr. Martinez, on Friday you told us about the search of the car of Mr. Mirabile. Can you tell us again what was found inside the car in the trunk?

A In the trunk of the Cadillac there was a few ounces of heroin and United States currency found in an attache case.

Q Do you recall who took custody of the attache case?

MR. LAZARUS: Can we just have the witness testify as to what he recalls taking place at the time?

THE COURT: Try not to lead.

Q Subsequent to the taking custody of the attache case, was there an arrest made?

A The arrest was made of -- a previous arrest of John Gri[illegible] and his wife.

Q Concerning the 68 Massapequa Avenue address, was there an address made at that time?

A I don't follow.

Q Concerning Mr. Mirabile, he was arrested, is that correct?

A After the finding of the attache case, yes.

Q Did there come a time when you left the premises at 68 Massapequa Avenue?

A Yes, we did.

Q Tell us with whom you left.

A My car, it was myself, Dectective Cordelia and the defendant John Grimkie.

Q When you say your car, was it your own car?

A No, the car I was in. A rented car belonging to John Grimkie.

Q Who was in the other car?

MR. LAZARUS: I object to the leading. I think he is leading the witness in a substantial area. I ask that the witness be able to recite what he recollects. Questions are being asked requiring an affirmative or negative response.

THE COURT: I don't believe that the leading

has been undue but counsel will limit leading.

Q Tell us if there was another car?

A Yes, Detective McClean's car.

(continued next page)

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Q Who was in that car?

A Detective McClean, Viera, Sergeant Stefania, and the other defendant Vito Mirabile.

Q At this point, where did you proceed?

A At this point, I believe over to the Seventh Precinct in Massapequa to try to process the prisoners.

Q What happened?

A Upon arrival at the Seventh Precinct we were informed by one of the commanding officers there that since we had a search warrant --

MR. LAZARUS: I object to the term we, and we know who --

THE COURT: Try to be specific.

Q Who was present at the time you were so informed?

A Detective McClean, Detective Viera, Sergeant Stefania, myself and the two defendants.

Q Was Detective Codelia present?

A Yes.

Q Continue.

A We were informed that since we had a New York City search warrant they did not want to make the arrest at that precinct. They should be arraigned in New York City.

Q What if anything did you do?

A At the time we left the precinct with the

defendants and proceeded to the 112th Precinct, that is, where the first arrest was made.

Q Where is that located at, the 112th Precinct?

A I think Yellowstone Boulevard.

Q What borough was that?

A Queens.

Q In New York City?

A Yes.

Q What happened at the 112th Precinct?

A Upon arriving at the 112th Precinct, both defendants were booked at the 112th Precinct and the narcotics and the money and the other paraphernalia was vouchered at the 112th Precinct.

Q At the booking, who was present?

A Myself, Detective Codelia, Detective Viera, Detective McClean, Sergeant Stefania.

MR. KAPLAN: I ask this document be marked for identification.

THE CLERK: Document marked as Government's Exhibit 89 for Identification.

MR. KAPLAN: And a second document.

THE CLERK: Document marked Government's Exhibit 90 for Identification.

(So marked for Identification.)

Q I show you what has been marked as Government's Exhibit 54 in Evidence and ask you to explain that document to the jury.

A This is a Police Department usual report.

Q Also known as usual occurrence report?

A Yes.

Q Please explain.

A A usual occurrence report is made out, like the word says, usual occurrence in the case of a homicide or big narcotics arrest or any narcotics arrest, a copy is automatically forwarded to the officials in the Police Department, the Police Commissioner, Police Inspector's office, so that they have knowledge of what actually happened in regard to any particular case.

Q Where was this report made out, if you can recall?

A Made out at the 112th Precinct.

Q What names are reflected on the report?

A Sergeant Stefania, Detective John McClean, Raymond Viera, Edward Codelia, Patrolman Luis Martinez.

Q I show you what has been marked as Government's Exhibit 89 for Identification and ask you if you identify that document?

A It is a property clerk's voucher with two plastic

envelopes, alleged heroin, one plastic bag alleged marijuana.

Q How does it come about that such a document is prepared?

A Upon any seizure, guns, money, or whatever, a property clerk's voucher is automatically made.

Q Is this document made in the normal course of business?

A Yes.

Q Is it the normal course of the business of the Police Department to make and maintain such a document?

A Yes.

MR. KAPLAN: I offer it in evidence.

MR. LAZARUS: No objection.

MR. WALL: No objection.

THE COURT: Mark it.

THE CLERK: Government's Exhibit 89 marked in Evidence.

(So marked.)

Q I show you what has been marked as Government's Exhibit 90 for Identification and ask you if you can identify that document.

A This is a Police Department lab report, analysis report. It is forwarded to the arresting officer and the other copy is forwarded to the property clerk's office.

Q Is that document kept in the normal course of business of the Police Department?

A Yes, sir.

Q Is it the normal course of business to keep and maintain such a document?

A Yes.

MR. KAPLAN: I will offer it in evidence.

MR. BRACKLEY: May I have a voir dire on this document?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BRACKLEY:

Q Who was the arresting officer, sir?

A Myself.

MR. BRACKLEY: No further questions.

MR. KAPLAN: I offer it.

THE CLERK: Government's Exhibit 90 for Identification received in Evidence.

(So marked.)

DIRECT EXAMINATION

BY MR. KAPLAN (Continuing):

Q I show you what has been marked as Government's Exhibit 53 in Evidence and ask you if you can identify a series of forms.

A Yes. This is vouchers of the money vouchered in the Mirabile case.

Q How much money was vouchered in the Mirabile case?

A (No response.)

Q Would it refresh your recollection if you referred to Government's Exhibit 51 in Evidence regarding how much money was vouchered in the Mirabile case?

A Yes. $9485.

Q Is Government's Exhibit 51 in Evidence a memorandum regarding the vouchering of that money?

A Yes, it is.

Q I show you what has been marked as Government's Exhibit 52 in Evidence and ask you what that document is.

A This is a receipt given to Vito Mirabile of the money vouchered or seized from him.

fols (Continued on next page.)

Q Is there a signature purporting to be Zito Mirabile's signature on that document?

A Yes, there is.

Q Do you recall what else happened at the 112 Precinct, other than the vouchering of the money and the booking of Mirabile?

A After the booking was made, all the drugs and narcotics and everything else was vouchered, we left the precinct.

Q When you say "we left the precinct", whom are you referring to?

A Myself, Detective McClean and Sergeant Stefania.

Q In what car or cars at that time did you leave the precinct?

A In Detective McClean's car and John Grimkie's automobile.

Q Did there come a time when you went to a certain place?

A We went back to the location of John Grimkie's residence, due to the fact that our own automobiles were located at that address.

Q When you say "our own automobiles" whose automobiles are you referring to?

A Detective Codelia's car was at that address, Sergeant Stefania's and Viera's car.

Q What happened when you got to John Grimkie's car where the other cars were located?

A Myself and Detective Codelia went to Detective Codelia's car. I was riding with him that day. We parked John Grimkie's car in front of his residence and we left it there with the keys in it and then myself and Detective Codelia pulled up next to McClean's car.

Q When you say you pulled up alongside Detective McClean's car, where was it located?

A Detective McClean's car was to my right. I was on the passenger side and Detective Codelia was driving.

Q Can you tell us who was in the Detective McClean's car.

A Detective McClean and Sergeant Stefania -- Detective Viera and Detective McClean.

Q What happened when you pulled up along side Detective McClean's car?

A Detective McClean pulled down the window and he threw a bundle of money into Detective Codelia's car.

Q When he threw a bundle of money into Detective Codelia's car, what happened after that?

A Just -- he just left and pulled off.

Q Did you observe Detective McClean when he threw the money into the car?

A Yes.

Q Would you describe Detective McClean as you observed him when he threw the money into the car?

A He just left and didn't say anything -- didn't say anything, just pulled off.

Q He left?

A Yes.

Q What happened between yourself and Detective Codelia in the car?

A I received $500.

Q Who took custody of the money when it was thrown in the car?

A Detective Codelia.

Q How was the money wrapped?

A Sime some rubber bands.

Q Detective Codelia took the money?

A Yes.

Q And what happened?

A He gave me $500.

Q Was there any remaining money in the bundle?

A Yes.

Q What did Detective Codelia do with it?

A Kept it.

Q Can you tell us after that where did you go?

A After that we drove up to the Bronx to my car and from there I went home and Detective Codelia went home.

Q When you say you drove up to the Bronx, Detective Codelia drove up to the Bronx; is that correct?

A That's correct.

Q You lived in the Bronx?

A Yes.

Q Where did he live?

A Islip, somewhere.

Q What was the next thing that happened with respect to this case?

A The very next day in the morning I went back to the 112 Precinct to pick up the prisoners and went directly over to the arraignment room at the Queens County Courthouse.

Q Explain to the jury what was your purpose in going to pick up the prisoners? What's the procedure that is followed?

A The procedure -- the prisoners were lodged overnight at the 112 Precinct, due to the fact that there was no court in session at the time. So they were picked up the next morning for arraignment purposes at the Queens

GABRIEL STEFANIA, called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

xxx DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. Stefania, how old are you, sir?

A Forty.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes, four.

Q Are you presently incarcerated?

A Yes.

Q What is the sentence that you are serving?

A Six months.

Q Are you here on a furlough today --

A Yes.

Q -- to the court?

What was the offense that you pled guilty to?

A Filing a fraudulent income tax return.

Q With respect to the sentence that you got, what else other than the six months, were the terms of your sentence?

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Q Who completed getting the warrant signed?

A When I got there I met McClean and Viera. And later I believe it was out in the field that I met Martinez and Codelia. They may have been there prior to that. I don't know.

Q Were the warrants signed when you got there?

A Yes. We were there a short while. It was either signed or just being signed in the courtroom.

Q Where do you live with respect to the courthouse or the DA's office?

A Well, about 20 minutes away.

Q Did you drive on that occasion?

A Yes. I was in the office when I was called. I drove from the office.

Q When you arrived and met Detective McClean and Detective Viera, what is the next thing that happened?

A After the -- we got the warrants. We went to the vicinity of Grimkie's house. And that's where we met Martinez and Codelia.

Q Do you recall the address of Krimkie's house?

A Forest Hills or Kew Gardens. I don't remember the address.

Q Is that the first time you have been there?

A Yes.

Q What happened when you got there?

A We stayed in the area for a while, waiting for Grimkie to come home. We might have waited an hour. Two hours maybe. I don't recall exactly. But eventually we entered the house with the warrants. Grimkie and his wife were home.

Q Do you have any recollection of how many cars went with you to the Grimkie house?

A Well, I left -- I think I left my car near the Grimkie house. I think I either left it at the DA's office or Grimkie's house. It's only about five minutes. And we had -- I believe it was McClean's car. And Codelia was in his car. And there may be another car. One of the other men might have had his car there also.

Q When did you meet Codelia and Martinez?

A After we got to Grimkie's house. We were in the street, kept the house under observation.

Q And they came along; is that correct?

A Yes.

Q What did you next do?

A As I said, we waited there for a while and kept the house under observation. And then we entered the house.

Q Was there any particular purpose why you and the Sergeant were present at this time?

A The procedure was when a search warrant was obtained, at that time in the narcotics division, when the men got a search warrant, they notified the Sergeant, and the Sergeant was supposed to be present when the warrant was executed.

Q With respect to the arrest and seizure at the Grimkie house, please describe what you and the members of the team did.

A We searched the house. And all that we found was some paraphernalia, narcotics mixing paraphernalia. So we took Grimkie and his wife and told them we had another warrant to execute. And we took them with us out to Nassau County to execute the second one.

Q Do you recall how many cars you had when you went into Nassau County?

A Well, we -- at least two cars. Might have been three. I am not sure. But I was in one car with McClean, and Viera and Grimkie. And Martinez and Codelia were in the other car.

Q Grimkie's wife was also along?

A I think she was in the other car. I think.

Q Did you leave your car in the area?

A Yeah. I'm not positive if I left it near Grimkie' house or the DA's office.

Q What is the difference between Grimkie's house and the DA's office?

A Couple of miles, the most. Very close.

Q So you proceeded to Massapequa; is that correct?

A Yes.

Q By the way, do you recall the date of this particular occurrence?

A November -- I am not sure of the exact date. November 17 or 18th.

Q Would it refresh your recollection if we showed you a document?

A Yes.

Q I show you Government Exhibit 54 in Evidence and ask you if that refreshes your recollection as to what date --

A Yes.

Q (Continuing) -- you proceeded to Mirabile's house.

A Yes. It was the night of November 12th, going into the 13th.

Q The night -- late night hours of the 12th and the morning of the 13th?

A Yes.

Q Did there come a time when you arrived at

Mirabile's house?

A Yes.

Q That was in Massapequa; is that correct?

A That's right.

Q What did you do?

A When we got there, we circled the block once. And we asked Grimkie if he -- excuse me -- asked Grimkie if he would go up to the door with us so we could get admission to the house without any problem, which he did.

Rang the bell. Somebody answered the door. When they saw Grimkie, they opened the door and we pushed our way in. Excuse me. we identified ourselves.

Q When you say, "we," whom are you talking about?

A McClean, Viera, Grimkie, myself, and we were followed by Martinez, Codelia and Grimkie's wife.

Q Once you got inside the house, what if anything did you and your fellow officers do?

A We identified ourselves and told them we had a search warrant, and we started searching the premises.

Q How was the search conducted?

A Well, we spread out and took different rooms. I don't remember who was in what room. But we generally covered the whole house. And then eventually we searched the car. There was a Cadillac out front. And tried to get into

the trunk.

Mirabile said he didn't have the key to the trunk. So we broke the lock off and tried to get the trunk opened.

Q When you say, "we broke the trunk open," whom are you talking about?

A McClean, Viera and I took turns on it. McClean was working on it. I tried to help him. Viera gave it a shot. It took us 20 minutes, 25 minutes. Maybe a half hour to get it open.

During the search, somebody -- we came across a gun in the house. And I believe that's all we found in the house.

Q What happened when you opened the trunk?

A When we opened the trunk, there was an attache case that contained a quantity of narcotics and a large amount of money.

McClean and I called Viera, told him what we found and we brought it into the house.

Q What happened inside the house?

A Inside the house, we showed it to Mirabile. And he stated he didn't know anything about the narcotics, and the money was his. It was from his business or his store.

I told him I was going to seize it.

Q Who was present at this conversation?

A McClean, Viera and myself. Codelia and Martinez

were in the house. They could have been anywhere in the area. They could have been present or they could have been in another room. I am not sure exactly where they were.

So Mirabile claimed that money was his legitimately. And I told him I was going to seize it. And then he said he had to meet his mortgage. He had a lot of problems at home. He wanted to leave some of the money for his wife.

The money was wrapped in rubber bands and laid flat so it would fit in the attache case. So I spoke to McClean and Viera, and we decided to give him one package of money.

Q When you say you spoke to McClean and Viera, where did this conversation take place with respect to where Mirabile was? Was he privy to this conversation?

A He was there. He was the one that was asking if we would leave him some money.

Q Like Mr. Solomon had before?

A Yes. In fact, first he said something similar to, well, you take half and leave me half.

And I said, "No. I'm going to seize the money."

Then he said, "Well, I need some money for my wife. I'm going to leave my wife here. I'm going to be in jail. She has to pay rent, she has to buy food.

I spoke to Mr. McClean the Viera, and we decided to leave him one packet of money and we would take one package

Q When you say the money, which money?

A Two batches. The money that is going to be vouchered, plus our own share.

Q Were the shares distributed or held?

A No, they were held. And I believe it was Viera that was holding onto it in the back seat. He might have put it in the trunk. But I am pretty sure it was in the car with us.

Q It was Mr. McClean's car, wasn't it?

A Yes. I am pretty sure it was.

So in the other car we had Martinez and Codelia and Grimkie. I believe Grimkie's wife stayed behind because she knew the family. She knew Mirabile.

We went to the Seventh Precinct in Seaford, Nassau County. And we intended to book the prisoners there. At least, book Mirabile. But when we spoke to the detectives and they said they couldn't book them, it wasn't the proper procedure, that as far as they were concerned we had to take them back to the County that we had obtained the search warrant in, which was Queens County. So we packed everybody up in the same order, in the same cars, and we proceeded to the 112th Precinct, which is the precinct of arraignment in Queens County. We got to the 112th Precinct, went upstairs. We vouchered the money that we were turning -- the share of the money that we

for each of us, meaning McClean, Viera, Codelia, Martinez and myself. So we separated the money. We gave Mirabile his packet. The rest of the money --

Q Do you recall how much? Did you not count it all?

A Roughly, I'd estimate about close to a thousand dollars. Because the way the packages were arranged and our final count, it would be roughly a thousand dollars in each packet. There were approximately 20 packets.

Q Now, what happened?

A We took some shares of the money, one package for each one of us. Again, that's myself, McQueen, Viera, Codelia and Martinez. And I think Viera held the money while we went back -- when we left the house. The rest of the money was kept in the attache case. The money that was going to be turned in and vouchered, it was kept in the case with the narcotics.

Then we left the house and we went to the Nassau County Precinct. I believe it's the Seventh Precinct in Seaford that covers that area.

Q When you say, "we," who was in each car?

A McClean -- to the best of my recollection, there was McClean, Viera, myself and Grimkie with the money and the evidence.

were coming in and the narcotics. And Grimkie and Mirabile were booked.

Q When you say, "we vouchered the money; we vouchered the narcotics," were you all present at the same time?

A Yes. We were all in the interrogation room. And as far as I know, all of us helped in counting out the money. We had to count it out by denominations listed on the property clerk's form. So everybody took a pile and we started separating it to the various denominations.

Q I show you what has been marked as Government's Exhibit 53 in Evidence. I ask you if you can describe that document.

A This is the property clerk's voucher. And this is the procedure that is followed when you voucher currency.

New York City Police Department. It's listed by denominations. And then the serial numbers are -- of the bills, of the various denominations.

Q Can you tell us how it was determined to voucher the amount of money that appears on those voucher forms?

A Well, as I said, we had taken roughly one packet for each one of the men present: myself, McClean, Viera, Codelia and Martinez. And the remainder of the money --

and we had left one packet with Mirabile. And the remainder of the money we vouchered. Roughly half I think is what we kept, as compared to the total amount.

Q I show you what has been marked as 51 in Evidence. I ask you what that form indicates.

A This is a report from the Commanding Officer of the SIU to the Commanding Officer of the Narcotics Division, stating that money was seized in an arrest.

(Continued on next page.)

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Q How much money was seized in that arrest?

A $9,485.

Q That was the money that was vouchered; is that correct?

A Yes, that's correct.

Q With respect to the narcotics, were the narcotics vouchered at that time?

A Yes. The narcotics were vouchered and a request for a laboratory analysis made. And they were left at the 112th precinct, as the procedure was at that time. Then they were taken by courier from the precinct to the police laboratory where they are analyzed and then brought to the Police Property Clerk's office.

Q I show you what has been marked as Governemtn Exhibit 90 in evidence and ask you to identify that.

A It calls for police laboratory analysis.

I don't know. This is the result of it. The results of the analysis.

Q I show you what has been marked as Government Exhibit 52 in evidence and ask you to identify that.

A This was a receipt that's signed by Vito Mirabile at the 112th precinct, stating that we seized $9,485 of United States currency.

Q How did it come about that Mirabile signed a

receipt for this money?

A Because we told him that we were leaving him one share of the money and we were taking a certain share, and we are going to voucher the rest. It was going to be vouchered by the Police Department.

Q You told him to sign that sheet; isn't that true?

A Yes.

Q With respect to an appropriation of money from drug dealers, was it your procedure to get a receipt when you could?

A When you could, yes.

Q For what purpose?

A So that if he claimed later on that a larger amount was seized, we could show that he signed a receipt for the amount that was turned in.

Q How long did these procedures take in the 112th?

A Oh, a couple of hours. Maybe two hours.

Q Everybody was present?

A Yes. Not for the entire length of time because we left separately. I think Martinez and Codelia left early and we finished the processing. Then Mc Clean, Viera and I drove to a location near where I had parked my car in Forest Hills, In Forest Hills-Kew Garden area. We waited a few

minutes. While we were there Viera had brought out the rest of the money, the money that we had separated from the money that had been vouchered. And I counted some of the bills and Viera counted the rest while McClean was driving.

Q Then what happened?

A When we got to the location of near where I had left my car, Martinez and Codelia drove up. I believe Codelia was driving his car.

Q Codelia was driving his car?

A Yes.

Q Martinez was sitting next to him?

A Yes, in the passenger's seat.

Q Do you recall where you were located in McClean's car?

A McClean was driving and I was sitting in the passenger's seat, and Viera was in the back seat with the money. Viera had given me one share of the money. And he handed -- when Martinez and Codelia drove up, he handed McClean their shares of the money. He handed them a sum of money.

Q In one bundle?

A Yeah. One stack of bills. And when they pulled alongside, McClean threw it in the window.

Q Threw it?

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A Threw it into Codelia's car. It was loose. It flurried around.

Q Did you observe anything about Detective McClean when he did this?

A He did it kind of jokingly. He laughed when he threw it in.

I -- then I had my share of the money and I left. I got out of the car and went to my car.

Q What was your share of the money?

A Approximately a thousand dollars.

Q When you talk about your share, and in all these cases, are we talking about basically approximations?

A Yes.

Q You don't have any specific recollection of the exact amount?

A Not the exact amount, no.

Q You went home that night?

A Yes.

Q What is the next thing that happened with respect to this case?

A Well, the next day -- sometime -- I guess it was around noon or shortly thereafter, I got a phone call from Patrolman Martinez. He said that he picked up his prisoner and had tried to arraign him in Queens weekend court.

Q This has been previously marked as Government's Exhibit 85 in evidence, referring specifically to Wednesday, November 17, 1971, can you tell us what team you were working at that time?

A Number 5.

Q With whom?

A Detective McClean, Detective Viera, Detective Codelia, and myself.

Q With respect to page 82, Thursday November 18, with whom were you working?

A Detective McClean, Detective Viera, Detective Codelia and myself.

MR. KAPLAN: I ask those two pages be marked in evidence.

THE COURT: They are deemed marked.

(Deemed marked in evidence.)

Q Do you recall around what date you began the investigation concerning the Sparza Linquist case?

A Towards the end of November that year. I can't recall the exact date.

Q I show you Government's Exhibit 61 in evidence and ask you if that refreshes your recollection concerning what date you commenced investigation in the Sparza Linquist case.

A November 18, 1971.

Q On or about that date?

A Yes.

Q Please explain what has been marked as Government's Exhibit 61 in evidence to the jury.

A This is a UF-49 which states upon receiving information, reliable information, that one Sparza Linquist is conducting large-scale narcotic in Brooklyn, New York. We requested permission to open a case folder.

Q Is this Sparza Linquist case in the same folder as the Grimkie-Mirabile case?

A Yes.

Q Was it under your name?

A Yes.

Q Did you receive reliable information referring to Sparza Linquist yourself?

A No, I didn't.

Q I ask you to take a look at Government's Exhibit 60 in evidence and ask you what that document represents.

A This is a request from Sergeant Stefania to the commanding officer of the Narcotics Division requesting for an ex parte order. In other words, to get a wiretap installed at Sparza Linquist.

Q Relative to what address?

A 2785 Ocean Parkway.

Q Does that document indicate who was working on this Sparza Linquist case?

A Detective Raymond Viera, John McClean, Edward Codelia, and Luis Martinez.

Q Concerning your investigation, initial investigation into the Sparza Linquist case, do you recall having a conversation with other members of the team?

A Yes, we did.

Q Who was present?

A Myself, Detective Codelia, Detective Viera, Detective McClean.

Q What was the substance of the conversation?

MR. LAZARUS: I object to the conversation.

THE COURT: On what grounds?

MR. LAZARUS: First of all, the defendant Viera is not named in this count.

MR. KAPLAN: He is named in the conspiracy. It is part of the conspiracy.

MR. LAZARUS: I object because there has been no conspiracy shown. There has been no evidence that there has been any conspiracy.

THE COURT: Overruled.

MR. LAZARUS: There is no evidence in the record that the defendant entered into a conspiracy.

THE COURT: Overruled, subject to connection.

You understand, ladies and gentlemen, the Government is proceeding step by step. Some of the inferences the Government will ask you to draw at the end of the case have not yet been established. Some of the evidence is what we call conditional evidence. That is unless other evidence is submitted by the Government some of the things that this witness has said cannot be used against some of the defendants because they may not be connected with the case at all or with certain elements of the case. You all understand that.

What the Government is trying to do, whether they succeed is up to you, is proceed step by step. I am allowing it to come in subject to later connection.

MR. LAZARUS: May I approach side bar?

THE COURT: No.

MR. LAZARUS: I further object to it being taken subject to connection. If at a later time it should not be connected it does not vitiate the damage done and I take exception to your Honor's ruling.

THE COURT: At an appropriate time if you feel

there is no connection you may move for a mistrial or a severance.

Proceed, please.

Q Mr. Martinez, you said you had a conversation with the othe police officers, Sergeant Stephania was present at this conversation?

A No.

Q What was the substance of the conversation you had with the three of them?

THE COURT: With whom?

MR. LAZARUS: I object to the form of the question.

THE COURT: I'm sorry, I didn't hear the question. If I hear the question --

Q What was the substance of the conversation that you had with the three defendants?

MR. LAZARUS: I would like to know what he said to who.

THE COURT: Yes.

Q Do you recall to the best of your recollection what was the conversation you had with each of the three defendants?

THE COURT: What was the date and place?

Q Do you happen to know the date and place?

A No.

Q Do you know approximately on refreshing your recollection with the file the date and place?

A On or about the week of November 18th.

Q Tell us what was said during the course of the--

MR. LAZARUS: What year?

THE COURT: 1971, of course.

MR. LAZARUS: I didn't hear him say that.

THE COURT: Could you fix the place?

Q Do you recall where the conversation took place?

A At the time, all I remember is it was down at the Brooklyn District Attorney's office, Kings County.

Q Was the McClean team and yourself working out of the Brooklyn District Attorney's office?

A I was assigned to the Brooklyn District Attorney's office.

Q Were they working with the Brooklyn District Attorney's office, if you recall?

A Yes.

Q With whom, specifically?

A Assistant District Attorney Hersey.

Q What was said during the course of the conversation?

A It was just decided that we should put an

illegal wire or recording device on the Sparza Linquist residence.

Q Did there come a time when you and other detectives went to the vicinity of Ocean Parkway in Brooklyn?

A Yes.

Q With whom did you go?

A Detective McClean, Detective Codelia -- excuse me, Detective McClean and Codelia, yes.

THE COURT: I didn't hear you.

THE WITNESS: McClean and Codelia.

Q What if anything occurred in the vicinity of Ocean Parkway in Brooklyn?

A We started to look for a location to place our equipment. We went to numerous buildings in the vicinity.

Q Whom did you see when you went to numerous buildings in the vicinity?

A We would speak to the superintendent of the buildings.

Q Were you together or did you split up?

A At times we were together and at times we split up.

Q What happened then?

A At this point we went over to the subject's residence and we found the pair to the telephone at that

location and afterwards it was decided it was too close to the residence and we decided to go someplace else to look for -- try to locate a pair at the other building.

Q When you say the subject's residence --

A 2785 Ocean Parkway.

Q Do you recall where you went with respect to locating the pairs?

A Can you repeat that?

Q Do you recall where you went with respect to where you went to locate the pairs?

A Adjoining building, 2815.

Q The adjoining building or one of the adjacent buildings?

A An adjacent building.

Q Did there come a time when you had a conversation with the superintendent there?

A Yes, we did.

Q CAn you tell us the substance of the conversation?

A We asked for permission for a room in the building. It is possible in the basement to place the equipment. He told us he had an empty apartment.

MR. WALL: I don't know who we are and who us is at this point.

Q Who was present at this conversation?

A Myself and Detective Codelia.

MR. LAZARUS: I object. I don't know if it is offered -- I would like an instruction that it is not received as to the defendant Viera.

THE COURT: You are objecting on the ground it should not be received against the defendant Viera?

MR. LAZARUS: I am objecting to the conversation that is not in the presence of the defendant Viera, yes.

THE COURT: Overruled on the ground that the Government's theory is there was a conspiracy involving Viera at this time and these conversations were in aid and furtherance of that conspiracy and during the course of the conspiracy.

Whether the Government can prove that, we await further events. On the basis of my previous ruling this ruling is adhered to.

Q Did there come a time when you secured a room in the building from the superintendent?

A Yes, we did.

Q Do you recall where the room was located?

A An apartment on the first floor.

Q Do you recall what apartment?

A I can't recall the exact number.

Q What did you do when you got to the apartment?

A We had already located the pairs down in the basement. Now we tried to determine how to get a line up to the apartment. We went up to the apartment and we found an empty telephone box where a telephone had been previously connected in one of the closets. By merely going down to the basement, locating the wires down in the basement, it is merely connected to the wires of the subject's pair and it's like having an extension on the phone.

Q What type of equipment did you use in installing the wiretap?

A It is known as a telephone head set and automatic tape recorder and automatic start and shutoff.

MR. KAPLAN: I ask this equipment be marked for identification.

THE CLERK: Government's Exhibit 96 for identification.

MR. KAPLAN: And this is 97.

THE CLERK: Government's Exhbit 97 for identification.

MR. KAPLAN: And this.

THE CLERK: Government's Exhibit 98 for identification.

(All so marked for identification.)

Q Mr. Martinez, I show you first what has been marked Government's Exhibit 96 for identification, a tape recorder; another tape recorder marked Government's EXhibit 97 for identification; and a box containing some wires marked as Government's Exhibit 98 for identification.

I ask you if you can identify this equipment?

A The one on the left is a Tashiba tape recorder belonging to Detective Codelia. This is a Sony (indicating).

Q Give me the numbers, please, when you describe them.

THE WITNESS: No. 96, your Honor --

THE COURT: Belonged to who?

THE WITNESS: Detective Codelia.

The Sony tape recorder, No. 97, is a tape recorder belonging to me, myself.

(continued next page)

MP:tr
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Q Are there any markings on it indicating it belongs to you?

A There was a time when I had my initials on it. When I started using it for illegal purposes, I made the marking look like nothing.

But they were my initials.

Q What is Government's Exhibit 98 for identification?

A This is an automatic start and shut off connected to the machine.

Q Explain it to the jury, how would it operate?

A It has four wires, two wires go directly over to the subject pair or telephone and the other two go to the tape recorder.

Q Had you previously used this particular equipment at any other time?

A Yes.

Q With respect to what case or cases?

A Mirabile-Grimkie case.

Q Can you tell us if these tape recorders are battery operated as well as being able to be plugged into sockets?

A Yes.

Q When did you use the battery --

A There were times we would listen to the tapes in our own cars and it was necessary to use them.

Q Why did you need two?

A One for listening and one for recording purposes

Q On how many occasions, if you can recall, did you come to 2815 Ocean Parkway subsequent to the installation of the wiretapping?

A We used to go there daily.

Q When you say we, who do you mean?

A Myself, Detective McClean, Detective Viera and Detective Codelia.

Q When you say Detective McClean, who exactly went to monitor the equipment?

A I would monitor the equipment. And then we would all listen to it. Just in case he had a conversation in Spanish, I would explain to them what was said.

Q With whom would you go over to 2815 to listen?

A At times by myself, at times with Detective Codelia or at times with Detective McClean.

Q Did you discuss with them the conversations that took place on the tape?

A We did, yes.

Q You say that the tape recorders were initially installed in an apartment on the first floor, is that correct

A Yes.

Q Did there come a time there was a change made with respect to the apartment on the first floor?

A Yes, we were informed by the superintendent that the apartment was going to be rented and that we would have to vacate the premises.

He had a room for us downstairs in the rear of the front entrance. We could use that for the equipment.

MR. KAPLAN: I ask these pictures be marked for identification.

THE CLERK: Batch of photographs marked as Government's Exhibit 99 for identification. Placed in a white envelope.

MR. KAPLAN: Should we have these marked in series, your Honor?

THE COURT: Whatever would be convenient. Do you want to show them individually?

MR. KAPLAN: Yes.

THE COURT: Mark them in a series then.

Q Mr. Martinez, what -- while the documents are being marked, would you tell us, when legal wiretaps were installed, to your knowledge by whom were they installed?

A They would always be installed by the Police Department or one of the District Attorney Offices.

Q Is there a group known as the CIB?

A Yes.

Q What is the CIB?

A Central Intelligence Bureau.

Q Would they be the Bureau to install wiretapping equipment?

A Yes.

Q With respect to the District Attorney's Office, was there a District Attorney Squad?

A Yes.

Q When there was a legal wiretap, would the SIU members install the equipment?

A No.

Q You said sometime ago there was a changeover in SIU during this period of time, do you recall that?

A Yes.

Q Will you please explain, concerning late November early December 1971, what change overs were experienced with respect to the teams?

A Well --

MR. LAZARUS: I object to the form of the question, your Honor.

THE COURT: On what grounds?

MR. LAZARUS: I don't think it is relevant to

any issue here.

THE COURT: Overruled.

A At the time all the patrolmen were transferred out of SIU and it was strictly a Detective Unit. And also there was a change of all the teams. Different team members were placed in different other teams trying to get more or less a first grade detective in charge of every team. Make them all like a supervisor.

Q Detective Vier switched out of the McClean team?

A Yes.

Q Detective Viera and Detective McClean were both first grade detectives?

A Yes.

Q Was he working on a different team?

A Yes.

Q You as a patrolman, were you switched out of the SIU?

A Yes, I was.

Q Where were you assigned?

A I was assigned to the 47th Squad.

Q Where were you working out of?

A Brooklyn District Attorney's Office team, temporary assignment.

Q Where were the three defendants working?

A At the time we would all meet practically every day at the Brooklyn District Attorney's Office and would work out of there.

Q You were no longer on the McClean team, is that correct?

A That is correct.

Q Mr. Viera was not on the McClean team, is that correct?

A That is correct.

Q Would you see these gentlemen daily during this period of time?

A Yes.

Q Did you have occasion to discuss what was on the wiretaps during this period of time?

A Yes.

MR. WALL: I object. I ask Mr. Kaplan to refrain from leading.

THE COURT: Please refrain from leading.

(Pause.)

THE CLERK: 18 photographs marked for identification as Government's Exhibits 99, 99A through 990 for identification, all inclusive.

Q Mr. Martinez, I show you these photographs

beginning with 99 for identification and ask you if that is a fair and accurate representation of the front entrance of 2815 --

A Yes.

Q --Ocean Parkway?

A Yes.

Q With respect to 99A, 99B, please describe those.

A 99A is the side entrance to the building of 2815 leading to the rear of the building.

On this one it is a walkway leading to the front of 2815.

Q Referring to 99B?

A Yes.

Q With respect to 99C and 99D, will you please describe what those photographs depict?

A 99C is a picture showing the entrance to the garage of 2815.

99D is a picture showing the garage and a window leading to the room where the machines were installed.

Q I ask you to identify 99F.

A This is a telephone junction box in the gargage of 2815 Ocean Parkway.

Q Where was the room that the equipment was in

with respect to the telephone junction box?

A The room was practically directly behind it, behind the junction box there is a big cement wall between it.

Q I show you 99H for identification and ask you if that is a fair and accurate representation of the room where the equipment was.

A Yes, it looks like it.

Q With respect to 99I, is that another picture of the room?

A Yes, it is.

MR. KAPLAN: With respect to Government's Exhibits 99, 99A, 99B, 99C, 99D, F, H and I, I offer them in evidence.

MR. WALL: No objection.

THE CLERK: Government's Exhibits 99, 99A, 99B, 99C, 99D, 99F, 99H and 99I for identification marked in evidence.

(So marked in evidence.)

Q Mr. Martinez, besides yourself, is there another member of the McClean team that speaks Spanish?

A Yes.

Q Who is that?

A Detective Codelia.

Q Do you recall if some of the tapes were in Spanish or in English?

A I can't recall if we had a Spanish conversation on the Sparza Linquist case.

Q Did there come a time when another wiretap was installed with respect to the Sparza case?

A Yes.

Q Was that subsequent or prior to that particular wiretap?

A After this one.

Q Can you tell us if that was an illegal or was it legal?

A That was a legal wiretap.

Q With respect to the wiretap -- withdrawn.

With respect to the first wiretap which you just discussed, was there any court order or affidavit or warrant with respect to that equipment in --

A I can't follow.

Q With respect to the first wiretap, the one you just described, was there any court order or warrant or affidavit?

A I have no knowledge if there was.

Q WEll, did you have discussions with the respective defendants in this case?

A Yes.

Q Initially?

A Yes.

Q Was anything about an affidavit or court order mentioned?

A Yes, there was.

Q With respect to the first wiretap?

A No.

Q With respect to the second wiretap, did there come a time when it was decided to go for a court order?

A Yes.

Q Do you recall the location of the premises where the wiretap was installed on the second?

A A gracery store on Fifth Avenue in Brooklyn.

Q Do you recall whose grocery store?

A Sparza's.

Q Do you recall who installed the equipment in the grocery store?

A Brooklyn District Attorney's Office.

Q You and the other team members had not?

A No.

Q With respect to the SIU wiretap record, 47 in evidence, I ask you to refer specifically to November 1971 and September 1971 to see with respect to the location

2718 or 2715 Ocean Parkway, if there was any wiretap entry of a legal wiretap?

A No sir, there wasn't.

(Cont'd on next page.)

Q With respect to the grocery store, can you tell me if there is an entry concerning the legal wiretap that you described?

A Yes, there is.

Q And with respect to what premises?

A The grocery store.

Q Is there a date when the order was entered?

A November 26, 1971.

Q Do you recall when the equipment was installed with respect to the entry of the order?

A The equipment was installed on or about that time.

Q After the entry of the order; is that correct?

A That's correct.

Q Did there come a time when you learned that the illegal wiretapping equipment had been seized by the Brooklyn District Attorney's office?

A Yes.

Q Can you tell us what happened?

A I received a telephone call at my residence and I was told not to go near the location.

Q From whom did you receive the telephone call?

A Detective Codelia.

Q Then what happened?

A I was informed not to go near the location of 2815 Ocean Parkway due to the fact that the District Attorney's office of Kings County had seized the equipment and they were just waiting to see if anybody came up to the location.

Q Then what happened?

A There was a meeting set up to meet at the Brooklyn DA's office and we all went there and we met at the DA's office at this time.

Q With whom was the meeting held?

A Detective Codelia, Detective McClean, Detective Viera, myself and an ADA Marty Hershey?

Q Were you present at the meeting with Mr. Hersey when the conversation was going on?

A No, I wasn't.

Q What happened after the meeting?

A I was just informed that there would be no problem, that I did not have to worry about -- that I was just out of one machine.

Q By whom were you informed?

A Detective McClean.

Q Was Detective Viera present?

A Yes.

Q Was Detective Codelia present?

A Yes.

Q Tell us what the relationship was between Detective McClean and Assistant District Attorney Marty Hershey --

MR. BRACKLEY: Objection.

Q That you observed.

THE COURT: I will permit it.

A They were just very close. Whenever they spoke it was in privacy.

Q Detective McClean and Marty Hershey would speak in private in Mr. Hershey's office on various occasions?

A Yes.

THE COURT: We will take a short break now. Would you retire, please, ladies and gentlemen. Would the Clerk pick up those papers, please. I suggest that defendants and counsel do not leave the courtroom or their seats until I tell them to.

(Jury leaves courtroom.)

MR. KAPLAN: Can these pictures go into the jury?

THE COURT: The Assistant District Attorney's name is what?

MR. KAPLAN: Martin Hershey.

THE COURT: Is he going to be a witness in this

COLLOQUY AMONG COURT AND COUNSEL

whether or not this witness is going to start -- whether Mr. Lazarus is in any way - -

THE COURT: Let Mr. Lazarus handle Mr. Lazarus' problem.

MR. LAZARUS: Except if it prejudices my client, Judge.

THE COURT: Let me hear from him, if you don't mind. I've given you your chance for motions.

MR. BRACKLEY: All right.

THE COURT: I'll now hear from Codelia -- From Viera, I'm sorry.

MR. LAZARUS: Well, Judge, I would ask for a mistrial in connection with the defendant Viera, simply because I take it your Honor has ruled that the testimony as to these prior acts as it now stands would be admissible?

THE COURT: Certainly, against Viera and McClean.

MR. LAZARUS: Because my position is that the -- the section you are referring to is just a codification of Molino and I don't reatly think that this testimony fits within any of the exceptions to Molino and I would except to it on that or -- and object to it on that ground.

Now, the other problem is that although I

did not represent Mrs. Calvo at the time this incident takes place, and did not represent her until many months later, after there was an indictment, in other words, to the best of my recollection, I did not represent her at that time.

I appeared, I think, when they were indicted some time in 1970. I think they had retained other counsel prior to retaining me. But I did represent her in the indictment that resulted from this arrest.

THE COURT: From this very arrest?

MR. LAZARUS: This very arrest. I represented her and her husband, in connection with the indictment in 19 -- well, I think it was a '69 indictment but they were arraigned in 1970, if I recall, going back five or six years -- six years.

But I did represent her and her husband in connection with that indictment which resulted from that arrest.

As I say, I did not represent her at the time -- at this time.

THE COURT: That was in the State Court of the indictment?

MR. LAZARUS: Yes.

THE COURT: What happened?

MR. LAZARUS: There was a plea. They took a plea. The case did not go to trial.

THE COURT: Did she discuss this incident with you? If you are free to answer that?

MR. LAZARUS: To the best of my recollection--

THE COURT: Remember, you have an attorney-client privilege.

MR. LAZARUS: Yes, Iunderstand that, I understand that.

THE COURT: It's her privilege, not yours.

MR. LAZARUS: Yes, I understand that, too. When -- when you say it's her privilege, unless there is some waiver known to me, I think the privilege would apply as far as I am concerned, too.

THE COURT: That is right, that is why I'm warning you about it. You may not want to answer my question because has not, as far as you know, wavied her privilege, to keep inviolate what you said to her and what she said to you.

MR. LAZARUS: I have no recollection of this subject matter being the subject of any attorney-client relationship.

THE COURT: Would you feel inhibited in cross-examining her because she was a client?

MR. LAZARUS: Well, I -- in all candor, I must

say that I probably would.

THE COURT: I think we'd better brief this point and I'll hear it tomorrow.

I must say I am more concerned about this problem than I am about the Codelia problem.

MR. LAZARUS: I would also say that if my motion for a mistrial is denied that I would move for a severance.

THE COURT: Yes, I understand that.

MR. LAZARUS: As to the defendant Viera.

MR. KAPLAN: I don't understand what possible basis the prejudice is.

THE COURT: He has to cross-examine her vigorously.

MR. KAPLAN: She's been advised of this, your Honor. She certainly understands.

THE COURT: But he has to now represent his present client and he may be cross-examining her or failing to cross-examine her because of inhibitions as a result of what he learned then or the relationship he had. I don't know what the answer to this problem is. I'm troubled by it. I think you'd better both brief it.

MR. KAPLAN: It's probably a matter of first impression, your Honor. I'm certainly sure that we

are not going to find any Federal cases on this particular --

THE COURT: Why not?

MR. KAPLAN: I just think it's a rather unique problem.

MR. BRACKLEY: Your Honor, the thing --

THE COURT: No. I think there are questions like this that come up. Very close to it. I don't know whether exactly this has come up, but I've seen cases like this myself, read them and seen them in the literature.

MR. WALL: Your Honor, there is an additional problem.

THE COURT: I think there is some Second Cirsuit discussion.

MR. WALL: U. S. v. Bynum, an issue vaguely similar to this but there is an additional problem created by this and that is that ifthis evidence is admissible against Codelia, as I assume it would be if your Honor rules against me, then I may have to be in the position of calling Mr. Lazarus to the stand to ask him whether or not this $20,000 rip-off, whether fresh complaint was made about it at a time when the lady would have every reason to confide in her counsel.

THE COURT: That's another problem.

MR. KAPLAN: Perhaps we --

THE COURT: He's already told you the fresh complaint wasn't made so I am not going to allow you to call him for a no good reason.

MR. WALL: It ought to be brought out in some way.

MR. LAZARUS: I'm saying, your Honor, to the best of my recollection -- we are talking about -- when you say fresh complaint, I say I did not.

THE COURT: There were previous -- there were previous attorneys?

MR. LAZARUS: Well, I did not represent her at that time. As to what action any previous attorney took, I don't know. I don't know how far.

THE COURT: They would be the attorneys to ask about fresh complaints. I don't think we need Lazarus for that point or Mr. Lazarus for that pointL I think the other problem is more troublesome.

You'd better brief it. I don't know what the answer is.

MR. BRACKLEY: Your Honor, the only thing that I see and the only purpose for putting this

witness on is for when Mr. Lazarus cross-examines her, to say, do you remember I told you all about this?

MR. KAPLAN: She won't say that.

MR. BRACKLEY: Then, I don't --

MR. KAPLAN: I can assure you there won't be any embarassment to Mr. Lazarus or any other attorney in this case concerning that.

Everything will be done properly and with a sense of propriety and certainly I don't think that this attorney-client situation is going to in any way violate anybody's constitutional rights of any attorney-client privilege.

I think -- I was --

THE COURT: Why didn't you tell Mr. Lazarus about it so he could have at least made a determination about whether he wanted to get out of the case?

MR. KAPLAN: Your Honor --

MR. LAZARUS: I tell you this, your Honor. If I knew at the beginning of this case that this woman was going to be a witness here, I might very well never have taken -- appeared or tried this case.

MR. KAPLAN: Perhaps we should all take a look at that statement that was taken and the date of that statement, which is subsequent to trial.

THE COURT: What trial?

MR. KAPLAN: This trial. Subsequent to the commencement of the trial.

THE COURT: You've known for a month that she might be a witness.

MR. KAPLAN: Judge, as you know, there are a lot of things that have happened in this case and for me to advise Mr. Lazarus of a -- to tell you the truth, there are a lot of -- there have been a lot of similar acts and a lot of possible evidence that the Government could present in this case.

For us to turn over all our possible evidence to the defense is quite an unusual procedure, in light of the turnover of 3500 material prior to trial.

THE COURT: I know, but this is a special situation, where a witness had been represented by counsel and counsel might have elected to consult iwth the client and determine whether he wanted to continue in the case.

MR. KAPLAN: Your Honor, suppose --

MR. LAZARUS: I have to add something else here that comes to me, Judge, and which I think -- may be more important.

It is that there was a bail forfeiture

concerning her last husband, which I believe is or was still pending. I did not represent her in connection with that.

However, I must say that she did come up to talk to me about that and I do know or I believe that in some way that this money from this bail forfeiture, this issue has not been determined.

THE COURT: What's that got to do with it?

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MR. LAZARUS: Well, we're getting into an area where probably what she told me was in an attorney-client relationship, although I say I never represented her in the recovery of the bail forfeiture.

MR. KAPLAN: Well, perhaps if she waives the privilege when -- if she takes the stand, we don't have that problem.

THE COURT: If she waives the privilege you don't have the problem. But the question is --

MR. LAZARUS: It doesn't --

THE COURT: Does she owe you any legal fees?

MR. LAZARUS: No.

THE COURT: You have no relationship with her except that one appearance in that case.

MR. LAZARUS: Well, she has come to -- since her husband died, she has seen me from time to time when I represented her husband.

MR. BRACKLEY: Did she say anything contrary to what she is saying now?

MR. LAZARUS: The problem is this: It could very well be that it's putting me in the position where I would have to cross-examine this woman in connection with this thing and it puts me in a very strange position and --

THE COURT: Well, it's only a quarter to six. Brief it, and I will see you tomorrow morning.

MR. BRACKLEY: What time are we starting tomorrow?

THE COURT: Well, it's on for 10:15. If I get a couple of briefs in at nine o'clock, I will hear argument tomorrow morning after we hear the other witness.

You can get it typed up, and we will hear the other witness until about 11:30 or so and then we will have argument and then I will make a decision on it. I don't know how I am going to decide it.

MR. BRACKLEY: Can I hold her off until I get all the papers?

THE COURT: Yes. We are not going to put her on. By the time we have this other witness on and we have argument, it will be 2:25 before she gets on.

MR. KAPLAN: Can we have a representation by counsel that she won't be disturbed during the interim and that none of the defendants will be made known about this so that we don't have the problem of the defendants visiting her or calling her or anybody else calling on her. Since we do have some experience in this case with some -- some deaths and disappearing witnesses -- although I am not

attributing that to the defense -- I just would -- as a sense of her own security and well-being in her own state of mind perhaps caution everybody concerned with respect to that.

MR. BRACKLEY: Except I do know that they have a very intimate relationship with McClean and I don't know how I can properly get ready for her without him making known to me all the material I need. Now, I need --

THE COURT: I think that is so. I don't see how they can --

MR. KAPLAN: As long as your Honor directs counsel and the defendants not to discuss this with anyone else, not to contact her or do anything in any way making this known, especially to her or to anyone associated with her, so that she may not feel intimidated.

THE COURT: No. I think you'd better post a guard tonight if that's what --

MR. BRACKLEY: I understand she --

MR. KAPLAN: Well, there are phones, your Honor. There are other ways it can be done. And in this case I would just ask -- the sensitivities of the situation seem to demand something a little more firm than that.

THE COURT: Well, do you have any reason that you or your clients will want to contact her?

MR. BRACKLEY: No.

THE COURT: Well, don't do so.

Do you have any reason?

MR. WALL: No.

THE COURT: DOn't do so.

Do you have any reason?

MR. LAZARUS: Certainly not.

THE COURT: Don't do so.

MR. BRACKLEY: It is my understanding, your Honor --

THE COURT: You may discuss this with your clients. Your clients are to be instructed not to talk to anybody else about it and not to contact her.

MR. LAZARUS: When you say "brief the situation," brief the problem, the question is simply this: I really don't know whether you are going to find anything analogous to this.

THE COURT: Well, you can't tell.

MR. LAZARUS: Right now -- I am not saying that I won't, but assuming that I do, I think in the context of this case, I am now saying that I feel that to be placed in a position of cross-examining somebody on what is rather in this case an important

issue concerning an exhibit that I have here, a client that I formerly represented, places me in -- as an attorney, in almost an intolerable position.

THE COURT: Well, I understand your position. See if you can find some cases or something for me.

MR. LAZARUS: Yes.

THE COURT: Your position is quite clear to me.

MR. KAPLAN: Your Honor, as far as Mrs. Kalvo is concerned, she understands what is going on here with respect --

THE COURT: Apparently she is willing to waive all privileges.

MR. KAPLAN: Exactly. She has the greatest respect for Mr. Lazarus. She understands that he is an attorney and is bound to go after her, so to speak, and she appreciates that, and anything that Mr. Lazarus knows or wants to in good faith question her about --

MR. LAZARUS: You see--

MR. KAPLAN: It is no problem with respect to her. And certainly the jury doesn't know about it. And it won't come out. So I don't see really what the problem is.

MR. LAZARUS: In in all fairness, I must say

I am fond of the woman.

THE COURT: Although that is not

MR. KAPLAN: And Mr. Brackley can cross-examine because he certainly will have no problem with that.

MR. LAZARUS: What concerns me is this: I have a -- I've got a duty to Viera here, and it really worries me.

THE COURT: But you have to go after it; that's all.

MR. BRACKLEY: Your Honor, I think she testified --

THE COURT: Fondness for a witness has never inhibited you before, has it?

MR. LAZARUS: Well, when I say "fondness," I mean it is somebody that I have seen and I know. I don't want to say "fondness." I don't want that misinterpreted. It is somebody that I saw over the course of time, a woman who I know has some children and has problems and I felt for her. That's what I am -- that's what --

THE COURT: I know. But, remember, we are all professionals. We never allow our emotions to interfere with --

MR. LAZARUS: It is not a question of

emotions.

THE COURT: --activities in the courtroom.

MR. LAZARUS: It is not a question of emotion. I just don't know whether I can -- and I am not looking to cop out on anything here. I just don't know-- It is my duty to Viera which I am now concerned with, and that it will be somewhat affected. I mean, I am duty bound to defend him as vigorously as I can.

THE COURT: That's right.

MR. KAPLAN: I think, if anything, Mr. Lazarus is in a position -- in a better position by virtue of his prior representation of Mrs. Calvo and not in a worse position.

THE COURT: Yes.

MR. KAPLAN: He knows things and -- and the privilege is going to be waived. If there are certain things that bother him, Mr. Brackley can carry the ball.

THE COURT: Why don't you brief it, each one of you? Mr. Brackley is representing his client. Mr. Lazarus is representing his client. And there may well be different approaches on the cross-examination.

MR. KAPLAN: I believe, your Honor, that the

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(The following took place in chambers.)

(Present: Mr. Lazarus, Mr. Wall, Defendant Viera, Assistant U. S. Attorney Kaplan, and Assistnat U. S. Attorney Bergman.)

THE COURT: Swear the witness, please.

Do you have a witness?

MR. LAZARUS: Yes. First I would like -- So we know -- I would like to renew my motion that was made yesterday for a severance or mistrial in connection with the defendant Viera.

THE COURT: All right. Swear the witness.

R A M O N V I E R A , called as a witness, being duly Sworn by the Clerk of the Court, testified as follows:

DEFENDANT VIERA: Ramon Viera, 64 Stockbridge Road, Yonkers, New York.

EXAMINATION

BY MR. LAZARUS:

Q Mr. Viera, did it come to your attention yesterday that a person by the name of Betty Calvo was to be called as a witness by the Government in this case?

A Yes, I was informed.

Q Were you also told that I had at one time been the attorney for Betty Calvo and her husband?

A Yes. I was informed by you.

Q And that I had represented her in connection with

an indictment that concerned the very incident that the Government stated that she was to testify to in this trial.

A Yes. My understanding is that she is to testify to events she claims took place in October of 1971 in which I arrested this Betty Calvo and her husband, Pepi Calvo.

Q Will you think back to the date you just said, December, '71?

A '69. I am sorry. October.

Q And did I explain to you that having represented her --

MR. KAPLAN: I am going to object to the leading, your Honor.

THE COURT: No.

MR. KAPLAN: I don't know who's testifying, Mr. Lazarus or Mr. Viera.

MR. LAZARUS: I think it is important.

THE COURT: Mr. Viera is testifying. But he has to indicate what was said to him.

MR. KAPLAN: I would like to hear Mr. Viera's words.

THE COURT: Go ahead. You may continue.

Q Did you have a conversation with me last night concerning this matter?

A Yes, I did.

Q Was your wife present?

A Yes, she was.

Q Did I tell you that in view of my prior representation of the proposed witness, Betty Calvo --

A Yes.

Q (continuing) -- and her husband?

A Yes.

Q (continuing) -- that I felt in all candor --

A Yes.

Q (continuing) -- that in some --

You don't have to answer, "Yes," just listen to me.

(continuing) --- that I felt that in all candor that I might in some way be inhibited from representing you to the best of my ability because of an inhibition concerning her testimony in my cross-examination of her.

A Yes, you did. You made it emphatically clear to me.

Q Did I -- Did I indicate to you during the conversation that had I know that one of your chief accusers would be a person that I had represented on a prior occasion, that had I known that prior to the start of this trial, that I would have withdrawn from the case?

MR. KAPLAN: I'm going to object to this. Again

it seems to me that Mr. Lazarus is testifying, and not Mr. Viera.

THE COURT: Well --

MR. LAZARUS: I don't think it makes any differnnce whether I made a statement.

MR. KAPLAN: The statement --

THE COURT: I overrule the objection.

THE WITNESS: Yes, you did tell me that.

Q All right. Now, having consulted with me in this matter, and your wife, and having given it some thought overnight, do you have a feeling or view about the present situation of my representing or continuing to represent you in this case?

A Yes. I have a very strong view regarding you representing me in this matter, particularly since you represented the person that I had arrested, represented her husband, a person who was my Informant, and that I feel -- after what you told me as to your inhibitions, that I feel I could not get accurate and full representation in the courtroom. I don't believe I would have the full services of the defense attorney. I feel that the questions he would ordinarily ask of another witness, he may not ask of this defendant -- of this potential witness. I feel unhappy with the situation, and in reality, I don't know what to do now.

THE COURT: Anything further on direct?

MR. LAZARUS: No.

THE COURT: There won't be any necessity for cross-examination.

Do you have any further witnesses?

MR. LAZARUS: No.

THE COURT: Do you rest in the hearing?

MR. LAZARUS: I would like to make a statement myself.

THE COURT: You may.

MR. LAZARUS: Yes.

I indicated yesterday, when we discussed this matter, before having spoken to Mr. Viera, that had I been informed by the Government prior to the start of this trial, that I would have withdrawn from the case.

I further indicate that the Government knew before the start of the trial that they were going to call Betty Calvo as a witness. And I further state to your Honor that th Government knew that I had represented her on a prior occasion.

As a matter of fact, there was a situation where her husband -- in connection with a case in this court, the Cirillo case -- had been an Informant, and where there was a question of his security, and some negotiations

were entered into about his being reestablished, and things of that nature. It never went through. But it was made with a representative of the U. S. Attorney. So I don't think there is any question that they knew that I had represented her husband, and that I had represented Mrs. Calvo.

And I think in the interest of justice I should have been notified about that. And as I stated yesterday, in all candor, I do think that there may in some way be some inhibitions placed on me in connection with this entire matter, regardless of any attorney-client relationship which may be waived by Mrs. Calvo.

THE COURT: All right.

MR. LAZARUS: I want to state further that my statements to Mr. Viera were made in all candor by me without any effort in any way to try and disrupt this trial, or to try and get out from this trial. They were made by me in my professional capacity, and I gave him my feelings as genuinely as I could. And I expressed to him the feeling that possibly under the situation that I might in some way be inhibited.

THE COURT: I understand. All right. Does the Government want to contest any of the statements made?

MR. KAPLAN: Contest the statements made by counsel, or the testimony?

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THE COURT: By counsel.

MR. KAPLAN: I would contest these statements, your Honor. With respect to calling Mrs. Calvo as a witness, that the Government knew that in its direct case that we would call Mrs. Calvo as a witness, I personally did not know that until after the jury was picked, that we would call Mrs. Calvo.

MR. LAZARUS: I thought you said for a month --

MR. KAPLAN: I knew for a month about the incidents. But I -- I have known for months and months about many incidences about this case. But we make decisions, and I only abide by those decisions. We didn't realize that Solomon was going to be killed, and Mirabile was going to disappear.

With respect to the relationship that Mr. Lazarus now tells us about that is now upsetting him, Mr. Lazarus has been aware for a long time of the relationship that existed between Viera and the Calvos. So I mean, he knew that Mr. Calvo was an Informant for Viera a long time ago.

THE COURT: Did you know? That's the only issue. Did you know that Mr. Lazarus represented Calvo?

MR. KAPLAN: I knew that he represented Pepi Calvo. I was advised. This is not Mrs. Calvo. He represented --

THE COURT: Did you know that he represented Mrs.

Calvo, the witness?

MR. KAPLAN: At some point in time, I did.

THE COURT: When did you first discover it?

MR. KAPLAN: I think when I spoke to Mrs. Calvo most recently.

THE COURT: When?

MR. KAPLAN: The date of that statement. I couldn't state with certainty.

THE COURT: Was it before or after the trial commenced?

MR. KAPLAN: In all honesty, I would say I spoke to her twice. Once before the trial commenced, and once after the trial commenced. And if my recollection serves me, I may have known before the trial commenced.

THE COURT: I will assume you did.

MR. KAPLAN: Yes.

THE COURT: All right.

The hearing is closed. The motion for a severance is denied. The motion for a mistrial is denied. Those are the only two applications before me.

This witness --

MR. LAZARUS: Well, I have a further application.

THE COURT: May I finish?

MR. LAZARUS: I am sorry.

THE COURT: If you don't mind.

This witness, before she testifies, must state that she waives completely her attorney-client privilege vis-a-vis Mr. Lazarus; and that she understands, and gives him full permission to cross-examine vigorously, and to use any information he may have obtained during the course of his representation of her and of her husband.

Under those conditions, I find that there is no possible prejudice, even remote. There is no practical reason why this defendant should at all be disadvantaged. There is no ethical reasor why this lawyer should not use all the information he obtained, aggressively and fully. There is ro reason in any of the cases -- I won't cite them, but there are many of them in the Second Circuit --And there is no reason under the Code of Professional Brsponsibility why he should be inhibited.

In point of fact, this defendant can only be advantaged by these circumstances.

Do you have a further application?

MR. LAZARUS: Well, a question was raised yesterday about notice concerning the fact that this witness was going to be called.

THE COURT: Yes.

MR. LAZARUS: I think yesterday, your Honor, we

had asked for a ruling as to the notice provision in connection with this.

THE COURT: Yes. I said you were going to get notice. You got the 3500 Material yesterday, didn't you?

MR. LAZARUS: Yes.

THE COURT: You are fully aware of the background of the situation --

MR. LAZARUS: Yes.

THE COURT: (continuing) -- since you represented the woman.

MR. LAZARUS: There is no question about that.

THE COURT: What else do you want?

MR. LAZARUS: I would further -- I would ask that the Court -- if you are not granting my motion, that you exclude her testimony.

THE COURT: Denied.

Any further applications?

MR. WALL: Your Honor, rather --

THE COURT: Excuse me. One at a time. Do you have any further applications?

MR. LAZARUS: Not at this time, no.

THE COURT: All right. You are not moving to discharge your attorney?

DEFENDANT VIERA: Financially, I couldn't afford

it.

THE COURT: Well, I don't care about the reason. If you need an attorney appointed by the Court, the Court can appoint one and pay for it. All I want to know is whether there is a motion to discharge this attorney.

There is none before me?

DEFENDANT VIERA: No.

THE COURT: Yes?

MR. WALL: Rather than burden the record now, may I simply state that for the reasons advanced yesterday on the record with respect to Codelia, I would request either a severance, which is my primary request, or that the witness not be permitted to testify on the grounds stated yesterday.

And failing that, at the very least, the Court give to the jury a limiting instruction.

THE COURT: Write out the limiting instructions that you wish the Court to give.

MR. WALL: All right.

THE COURT: I will consider it.

MR. WALL: Fine. That is without prejudice to my position that I am entitled to a severance?

THE COURT: Of course.

MR. WALL: Thank you.

CHARGE OF COURT

THE COURT: Are you ready to proceed, gentlemen?

All right, bring in the jury, please.

Mr. Marshal, keep everybody out while I am charging, if you don't mind. Thank you very much.

Do any of you have to leave during the charge? If you do, will you leave now?

All right, bring in the jury , please.

(Whereupon, the jury entered the courtroom.)

THE COURT: Ladies and gentlemen of the jury:

It is the Court's responsibility to instruct you with respect to matters of law. It is your duty as jurors to follow these instructions. It is your responsibility -- and yours alone -- to judge the facts in this case. You are the sole judge of the facts -- not counsel -- not I.

I have no view of the guilt or innocence of these defendants. Nothing I have said or done should be used by you in inferring innocence or guilt. You will decide the case solely on the evidence before you and the law.

The fact that this prosecution is brought in the name of the United States does not entitle the Government to any greater consideration than any other

litigant. All parties -- Government and individuals -- are equal before this Court. All parties are entitled to equal consideration. No party is entitled to sympathy or favor.

An indictment is an accusation in writing. It is not evidence of guilt. It is entitled to no weight in your judgment of the facts.

Each defendant has pled not guilty.

The Government has the burden of proving guilt beyond a reasonable doubt with respect to each element of the crimes a defendant is charged with committing and this burden never shifts throughout the trial. A defendant does not have to prove his innocence. He need not submit any evidence at all.

A defendant need not take the witness stand and you may draw no inference unfavorable to him because he does not testify. You may not consider the fact that a defendant did not testify.

A presumption of innocence remains with a defendant throughout the trial and must be considered by you in your deliberations.

A reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his life. Reasonable doubt may

result from the evidence produced or from failure to produce evidence.

Finding an individual to be guilty of committing a felony and subjecting him to criminal penalties is most serious and you will consider this fact in deciding whether you have a reasonable doubt. Nevertheless, if at the end of the trial you are convinced beyond a reasonable doubt that a defendant is guilty of the crime charged, then you should find him guilty of that crime.

It must be established beyond a reasonable doubt that a defendant acted willfully and knowingly before he may be found guilty of a crime.

An act is willful and knowing if it is done intentionally, deliberately, and voluntarily, with the specific intent to accomplish something the law forbids -- that is to say, with the bad purpose to disobey or disregard the law.

An act is not knowing if it is committed because of a mistake, carelessness, negligence, stupidity, or some other non-criminal reason.

The state of mind of a defendant must be inferred from the circumstances as revealed by the evidence.

Charge

The guilt of a defendant may be established without proof that he personally did every act constituting the offense charged if he aided and abetted another in the commission of a crime and had the requisite criminal intent.

The relevant provision of federal law, Section 2 of Title 18 of the United States Code, reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In order to find aiding or abetting, it is necessary to find that a defendant willfully associated himself in some way with the criminal venture charged and that he willfully participated in it as he would something he wished to bring about.

If you want to find out whether the defendant aided or abetted you must ask yourself such question as, did he willfully and knowingly associate

himself with a criminal venture to defeat the constitutional rights of inhabitants? Did he participate in it assomething he wished to bring about? Did he seek by his actions to make it succeed? If he did, then he is an aider and abettor.

Whoever aids, abets, counsels, commands, induces or procures the commission of a crime is punishable as a principal.

One may not willfully and intentionally remain ignorant of a fact important and material to his conduct in order to escape the consequences of the criminal law.

The indictment charges seven distinct counts or crimes. You must consider each count separately as to each defendant. I will describe the elements which must be proved as to each count after reading you the count. I have also prepared a chart for you to take into the jury room listing the counts to assist you in your deliberations. And I have prepared a list of witnesses and exhibits to help you in the jury room should you wish to call for any of this material.

Count 1 charges as follows:

Introduction.

1. John McClean, Ramon Viera and Edward

Charge

Codelia, the defendants, and Leslie Wolfe, John Egan, Luis Martinez, and Gabriel Stefania, named herein as co-conspirators but not as defendants, at all times relevant herein, were New York City Police Officers assigned to the Bureau of Narcotics, Special Investigation Unit of the New York City Police Department, acting under color of law of the State of New York.

2. Ernest Solomon and Vito Mirabile, at all times relevant herein, were citizens of the United States.

3. Ernest Solomon, Vito Mirabile, Nicodemus Olate Romero, Elba Guzman and Justo Quintanilla, at all times relevant herein, were inhabitants of the State of New York.

4. The Fifth and Fourteenth Amendments to the Constitution of the United States, at all times relevant herein, provided that no person shall be deprived of life, liberty and property without due process of law.

Count 1.

From in or about June 1969, to and including the date of the filing of this indictment, in the Eastern District of New York and elsewhere, John

Charge

McClean, Ramon Viera and Edward Codelia, the defendants, together with Gabriel Stefania, John Egan, Luis Martinez and Leslie Wolfe, named herein as co-conspirators but not as defendants, willfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate citizens of the United States in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States in violation of Title 18, United States Code, Section 241 and further conspired to subject inhabitants of the State of New York to the deprivation of rights, privileges and immunities secured and protected by the Constitution and laws of the United States in violation of Title 18, United States Code, Section 242.

1. It was part of said conspiracy that McClean, Viera and Codelia, the defendants, and Egan and Wolfe, named herein as co-conspirators not as defendants, unlawfully, knowingly and unlawfully would use their authority as police officers to take, abstract and appropriate to themselves approximately $81,600 from Nicodemus Olate Romero, Elba Guzman and Justo Quintanilla, thereby depriving said individuals

of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

2. It was further a part of said conspiracy that McClean, Viera and Codelia, the defendants, and Egan and Wolfe, named herein as co-conspirators but not as defendants, willfully, knowingly and unlawfully would use their authority as police officers to arrest the aforesaid Nicodemus Olate Romero and Elba Guzman and hold them in custody at 65-15 38th Avenue, Queens, New York and elsewhere, thereby depriving said individuals of a right secured by the Fifth and Fourteen Amendments to the Constitution of the United States, namely, the right not to be deprived of liberty without due process of law.

3. It was further part of said conspiracy that McClean, Viera and Codelia, the defendants, and Martinez and Stefania, named herein as co-conspirators but not as defendants, willfully, knowingly and unlawfully would use their authority as police officers to injure, oppress, threaten and intimidate Ernest Solomon, by taking, extracting and appropriating

to themselves approximately $6,000 from said individual, thereby depriving him of the free exercise and enjoyment of a right and privilege secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

4. It was further a part of said conspiracy that McClean, Viera and Codelia, the defendants, and Martinez and Stefania, named herein as co-conspirators but not as defendants, willfully, knowingly and unlawfully would use their authority as police officers to injure, oppress, threaten and intimidate Vito Mirabile by taking, extracting and appropriating to themselves approximately $10,000 from said individual, thereby depriving him of the free exercise and enjoyment of a right and privilege secured and protected by the Fifth and Fourteenth Amendments of the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

5. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps

designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Eastern District of New York and elsewhere:

Here are the overt acts charged.

1. On or about November 19, 1970, defendants McClean, Viera and Codelia and co-conspirators Egan and Wolfe took, extracted and appropriated to themselves approximately $21,600 from Nicodemus Olate Romero, Elba Guzman and Justo Quintanilla, in Queens, New York.

2. On or about November 20, 1970, defendants McClean, Viera and Codelia and co-conspirator Wolfe caused approximately $60,000 to be taken from a safe deposit box located in a Manhattan bank in Manhattan, New York.

3. On orabout October 27, 1971, the defendants McClean, Viera and Codelia and co-conspirators Martinez and Stefania took, extracted and appropriated to themselves approximately $6,000 from Ernest Solomon in Brooklyn, New York.

4. On or about November 12, 1971 defendants McClean, Viera and Codelia and co-conspirators

Martinez and Stefania took, extracted and appropriated to themselves approximately $10,000 from Vito Mirabile in Massapequa, New York.

I will instruct you in a few moments about the requirements that the Government prove beyond a reasonable doubt that overt acts were committed that constitute the charge.

Now, Count 1 charges the defendants with the conspiracy, under Section 371 of Title 18 of the United States Code, to violate certain rights, which are protected under Section 241 and 242 of Title 18 of the United States Code.

Section 371, the conspiracy statute, reads in relevant part:

"If two or more persons conspire...to commit any offense against the United States...and one or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of a crime."

In order to find the defendants guilty of Count 1 you must find that the government proved that the following elements of a conspiracy existed beyond a reasonable doubt. These elements apply to a conspiracy to violate either Section 241 or Section 242 and I am going to read 242 to you shortly.

First: That there were two or more persons involved. A person cannot enter into a conspiracy with himself. In this case, you will recall, it is charged that the co-conspirators included four persons who are not named as defendants -- Gabriel Stefania, John Egan, Luis Martinez and Leslie Wolfe. At least two of the seven named conspirators must have been in the conspiracy.

(continued next page)

Second: That the two or more persons wilfully and knowingly conspired or agreed.

Third: That the conspiracy was to violate the laws or Constitution of the United States, and

Fourth: That the defendant acted wilfully and with specific intent to violate the laws or Constitution of the United States.

If you find that there was no agreement among any of the co-conspirators mentioned in Count One, you may not find that a conspiracy existed. Thus, you must first consider whether there was a wilful and knowing agreement.

In order to find such an agreement, it is not necessary that you find that the persons charged met together and entered into an express or formal agreement, or that they stated orally or in writing what the scheme was or how it was to be achieved. It is sufficient to show that they came to a mutual understanding to accomplish the unlawful act.

Before you find that a defendant entered into a conspiracy, the evidence must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant wilfully participated in the unlawful plan, with the intent to advance or further

some object or purpose of the conspiracy -- here to deprive persons of their rights under the United States Constitution and laws, as I will explain in a few moments.

The agreement may be inferred from the circumstances and the conduct of the parties as revealed by the evidence. More direct evidence than this is usually not available, since a conspiracy is ordinarily characterized by secrecy. Nevertheless, suspicion cannot be a substitute for evidence and mere similarity of conduct does not establish a conspiracy.

To be a member of a conspiracy the defendant need not know all of the details of a conspiracy, nor all of the parties to it, nor all of the means by which the objects were to be accomplished. Each member of a conspiracy may perform separate and distinct acts. It is necessary, however, that the Government prove beyond a reasonable doubt a defendant was aware of the common purpose, and that the common purpose was criminal in nature and that this defendant was a willing and knowing participant with the intent to advance the purpose of the conspiracy.

A single conspiracy over a number of years is charged -- not a series of individual conspiracies. You

need not find that the conspiracy covered all the years in question but it must be more than a series of independent discreet agreements.

You may find a defendant guilty of a conspiracy if the Government proved beyond a reasonable doubt that he entered the ongoing conspiracy knowing that it was a continuing conspiracy and that the four elements are present. To be guilty of conspiracy, a defendant need not be a party to a conspiracy from its inception or to its end, so long as all the elements of the crime are proven beyond a reasonable doubt.

A single act may be enough to draw the defendants within the ambit of the conspiracy, provided you are convinced beyond a reasonable doubt that the defendants knew of the conspiracy and associated themselves with it, intending that it succeed.

Now, Count One charges the defendants with a conspiracy to violate both sections 241 and 242 of Title 18 of the United States Code. Section 241 refers to violation of civil rights of citizens of the United States, while Section 242 refers to violation of civil rights of inhabitants of a state, territory or district --

In this case, New York State.

One who is an inhabitant may also be a citizen. The Government contends that at the time of the alleged commission of the offense, Nicodemus Olate, Justo Quintanilla and Elba Guzman were inhabitants of the State of New York and not citizens of the United States, while Ernest Solomon and Vito Mirabile were citizens of the United States as well as inhabitants of the State of New York. Solomon's and Mirabile's citizenship was stipulated, you recall. To simplify your task I am just going to charge on the more comprehensive term, "inhabitants.' So I am only going to charge you with respect to what Section 241 provides, which is, as I noted, applies to inhabitants who are not citizens as well as inhabitants who are citizens of a state.

Section 242 provides as follows:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States... shall be guilty of an offense against the United States."

This law was passed by Congress in order to carry into effect the provisions of the Fourteenth Amendment of the Constitution of the United States, which you recall was adopted following the Civil War. And this amendment provides:

"No State shall deprive any person of life, liberty or property without due process of law." That is not the whole amendment, but it is a portion that relates specifically to the case you have before you.

Now, if you analyze the statute and the Constitution, you will find that the Government must prove beyond a reasonable doubt, in order to find a violation of the statute, and, therefore, a conspiracy to violate the statute:

First: That the conduct of the defendant must have deprived the victim of a right, privilege, or immunity secured or protected by the Constitution of the United States. One of the rights secured and protected by the Constitution of the United States is that no person acting under color of law shall deprive any person of property or liberty without due process of law. Money is "property," within the meaning of the Constitution.

"Liberty" is the right to do as you wish without being constrained.

Second: The accused must have been acting under color of law, that is, while using or misusing power possessed by reason of the law. A person need not be in uniform or on duty to be acting under color of law.

(Continued on next page.)

Third: The person upon whom the alleged act was committed must have been an inhabitant of a state of the United States, here the state of New York.

Fourth: There must have been an intent on the part ofthe defendant, wilfully to subject the victim to a deprivation of a right, privilege or immunity secured or protected by the Constitution or laws of the United States.

I have already instructed you as to what constitutes a conspiracy. Those factors must be proven in order for a conspiracy to violate Section 242 to be proven.

Section 242 requires that the person or persons deprived of constitutional rights were inhabitants of a state, territory or district of the United States. A person living in an apartment or hotel in New York is an inhabitant of the United States even though he's not a citizen. He remains an inahbitant until he leaves the country.

The 14th Amendment of the Constitution of the United States applies to the states of the union and is directed towards each officer within each state. This Amendment reads in part as follows:

Nor shall any state deprive any person of life,

liberty or property, without the process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Therefore, it guarantees to every person the right not to be deprived of his property, except in accord with due process of law. It is a protection against encroachment by law enforcement officials upon the right of any person under the Constitution of the United States. In other words, Congress intended to provide that no agency of a state, no officer or agent by whom its powers are asserted and carried into execution, should deprive any person of rights guaranteed by the Constitution. The Government must prove beyond a reasonable doubt that the defendants conspired to act "under color of law."

Misuse of power, possessed by virtue of state law and made possible only because of the wrongdoer is clothed with the authority of state law, is action taken "under color of law."

If you find beyond a reasonable doubt that the defendants conspired to abuse the power they possessed as policemen to confiscate some of the money of the named individuals who were legally constrained you may find that they conspired to act

under color of law.

You must consider whether a defendant acted wilfully, that is with the specific intent to deprive the named persons in the indictment of a constitutional right.

You have already been instructed that an act is done wilfully if it is done voluntarily and intentionally, and with the specific intent to do something the law forbids, that is, with bad purpose to disobey or disregard the law.

It is not necessary to show or prove that the defendant was thinking in constitutional terms at the time of the incident, for a deliberate deprivation of a person's constitutional right, for example the right not to be deprived of liberty or property by a person purporting to act as a policeman constitutes the specific intent to deprive that person of those rights. You may find that the defendant acted with the requisite intent even if you find that he had no real familiarity with the Constitution or with the particular constitutional right involved, provided that you find that he wilfully and consciously did the acts which deprived the victims of their constitutional rights.

If you find that the defendant knew what he was doing and that he intended to do what he was doing, and if you further find that what he did constituted a deprivation of a constitutional right, then you may conclude that the defendant acted with the specific intent to deprive the victims of that constitutional right.

For example, a defendant need not have been aware that a Federal statute or the Federal Constitution was being violated if he was aware that he was wrongfully using his police authority to take property or liberty in violation of the right of a person to be brought to court to have these rights adjudicated in a lawfully way using due process. If a policeman is supposed to arrest and voucher monies found in a prospective defendant's possession and he uses his authority to seize that money for his own use, that would be a deprivation of constitutional rights. A mere failure to comply with police or Court regulations because of some mistake or negligence would not suffice.

Similarly, an arrest and detention by a policeman designed only for punishment by him of the person arrested to coerce that person into giving

the policeman money would constitute a deprivation of constitutional right.

All people regardless of taint or deprivation, so long as they are inhabitants of a state, territory or district, are within the protective embrace of Section 242. Ever suspected criminality or accomplished incarceration furnish no license for the destruction of guaranteed constitutional rights.

When we say that a defendant must have the specific intent to violate a law, what does that mean in the context of this case? Obviously the defendant, to be guilty, does not have to say to himself: "I intend to, and will, violate the constitutional rights of this person." People who commit crimes such as the one charged here, do not usually have the Constitution in mind when they act.

What is required in this case is that a defendant has in effect said to himself: "When a suitable opportunity presents itself I will use my power and authority as a member of the New York City Police Department to force people inhabiting this state to give me their money without a trial before a regular court." The coercion and the denial of due process of law as guaranteed by the federal

Constitution can take place by threats of prosecution for crimes that the person may or may not be guilty of, or by keeping them in custody without booking and charging them, or by forcing them to leave the country, or by obtaining false receipts for less money than was taken from them.

I will now instruct you with respect to the requirement of overt acts. Under the applicable law an individual may not be convicted of a conspiracy if no overt, physical acts are committed in furtherance of the conspiracy. It is not enough that a defendant merely agreed to do an unlawful act. The overt acts, one of which the Government must prove beyond a reasonable doubt, need not be unlawful in and of themselves. Of course, the object of the conspiracy, the ultimate motive for the overt acts, must be unlawful or there is no conspiracy.

I have already read to you the overt acts charged in the indictment under the conspiracy count. Unless you find beyond a reasonable doubt that one of the defendants committed one of the overt acts as charged and that it was done in furtherance of the conspiracy, and with the knowledge that the conspiracy existed, you must

acquit the defendants of the conspiracy count. The overt act must be committed after the conspiracy commences and before it ends, in furtherance of the conspiracy.

Since intent and purpose are states of mind and it is not possible to look into a man's mind to see what went on in it, the only way you have of arriving at the intent and purpose of a defendant in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits. YOu must determine from all such facts and circumstances what the intent of the defendant was at the time in question. Thus, direct proof of wilfulness or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inference may arise from a combination of acts, although each act standing by itself may seem unimportant.

It is not necessary that the Government should prove all of these overt acts or all of the alleged purposes of the conspiracy in Count One.

In summary, as to Count One you must decide if any of these defendants named in the indictment conspired with each other or with any

other person who is named as a co-conspirator and not as a defendant, to violate the civil rights of the individuals enumerated in Count One. If you find such an agreement was made between such persons, then go further and determine if any one of these persons who entered into such alleged conspiracy did any of the one or more overt acts toward the furtherance of the conspiracy as set out in the indictment. Counts 2, 3 and 4 are similar, so I will discuss them together.

Count 2 of the indictment charges as follows:

On or about and between November 19, 1970 and November 20, 1970, both dates being approximate and inclusive, within the Eastern District of New York, John McClean, Ramon Viera and Edward Codelia, the defendants, acting under color of law, wilfully, knowingly and unlawfully did take, abstract and appropriate to themselves approximately $81,600 from Nicodemus Olate Romero, Justo Quintanilla and Elba Guzman, thereby depriving said individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law in violation

of Title 18 United States Code Section 242, (remember the law against depriving inhabitants of civil rights) and Section 2 (remember the aiding and abetting law).

Count 3 is exactly the same as Count 2, except that it charges the defendants with taking approximately $6,000 from Ernest Solomon on or about October 27, 1971.

Count 4 is exactly the same as Count 2 except that it charges the defendants with taking approximately $10,000 from Vito Mirabile on or about November 12, 1971.

These counts charge a violation of Section 242 Title 18 of the United States Code, which, although I read it to you in connection with Count 1, I will read it to you again:

"Whoever, under color of any law, statute, ordinance, or custom, wilfully subjects any inhabitant of any state, territory or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States is guilty of a crime."

While Count 1 charged the defendants with conspiring to violate Section 242, Counts 2, 3 and 4

charge the defendants with actually violating that section.

As you will recall, I have already at length explained to you in connection with Count 1, the four elements of Section 242, which the Government must prove beyond a reasonable doubt. To assist your recollection, I will summarize them for you:

First: that the particular defendant, or someone whom he was aiding or abetting, deprived someone of a right, secured by the United States Constitution or the laws of the United States.

Second: that the deprivation was committed under color of law.

Third: that the person or persons deprived were inhabitants of a state, territory or district of the United States. A person living in New YOrk City is an inhabitant of the United States even though he is not a citizen. He remains an inhabitant until he leaves the country.

Fourth: that the defendant acts wilfully and with specific intent.

In order to find a defendant guilty of Counts 2, 3 and 4, you must find that the Government proved each of these four elements beyond a

reasonable doubt.

You will recall that I have already explained these elements to you including the concepts of "aiding and abetting," "under color of law," and "wilfully" and "specific intent."

If you find beyond a reasonable doubt that a defendant or someone whom he was aiding or abetting took money from the persons named in the indictment for personal, unlawful financial gain while acting under color of law, then you may find that that defendant is guilty of depriving an individual of property without the due process of law, a right secured by the Fifth and Fourteen Amendments to the United States Constitution.

With respect to Counts 1 through 4, even if you were to find that a defendant acted wrongfully and in violation of state law such as those against theft, robbery, or bribe receiving, you may not convict him unless you find beyond a reasonable doubt that his conduct violated Federal statutes as I have explained them to you. Of course, an action may in violation of both Federal and state law.

Counts 5, 6 and 7 deal with alleged illegal

wiretaps. Since they are similar I will deal with them together. Count 5 reads:

On or about and between the 21st day of October 1970 and the 20th day ofNovember 1970, both dates being approximate and inclusive, within the Eastern District of New York, John McClean, Ramon Viera and Edward Codelia, the defendants, wilfully, knowingly and unlawfully did intercept and endeavor to intercept by means of an electronic device, that is, a telephone wiretap, wire communications made and sent during the period aforesaid, by and between persons over a telephone located at 65-15 38th Avenue, Queens, New York in violation of United States Code Section 2511 (1)(a), that is the wiretapping law, and Section 2, that is the aiding and abetting law.

Count 6 is exactly the same, except that it charges the defendants with using illegal wiretaps between November 1st and 13th, 1971 on a telephone located at 110-39 62nd Drive, Forest Hills, New York.

Count 7 is exactly the same as Count 5, except that it charges the defendants, McClean and Codelia but not Viera with using illegal wiretaps between November 17th and December 2nd, 1971, on a telephone located at 2785 Ocean Parkway, Brooklyn, New York.

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THE COURT: (continuing) The defendants are charged in Counts Five, Six and Seven of the Indictment with the violation of Title 18, United States Code, Section 2511 (1)(2), but Viera is not charged with Count Seven. That Section provides in pertinent part that: . . . "Any person who willfuly intercepts, endeavors to intercept, or procures any other person to intercept any wire communication in violation of a Federal Statute shall be guilty of a crime."

Two essential elements must be proved beyond a reasonable doubt in order to establish the offense charged in Counts Five, Six, and Seven of the Indictment. These essential elements are as follows: First --

Do you want to be excused from the deliberations? Are you feeling well?

JUROR NO. 7: I have a bad cold.

THE COURT: Do you wish to be excused?

JUROR NO. 7: No, your Honor.

THE COURT: (continuing) The act or acts of intercepting or endeavoring to intercept the wire communications as alleged in the indictment is a violation of Federal Statute.

Second, the doing of such act or acts willfully; and Third, no Court with the power to issue an Order for

the particular tapping did so at time in question. The Federal Statute under the circumstances shown r uire a Court Order permitting tapping of the specific telephones tapped, if you find that they were tapped. An order to tap one telephone number, or a person at a particular telephone number, does not permit another telephone to be tapped.

The burden of presenting such proof is always upon the prosecution. The law never imposes upon a defendant the burden or duty to call any witness or procure any evidence, although the indictment charges conjunctively the defenaant did endeavor to intercept wire communciation.

The Government is required or must prove only that the defendants did only one of these three acts. In other words, the Government has carried its burden of proof if it's shown beyond a reasonable doubt that the defendants did endeavor to intercept.

The terms "intercept" and "interception" as used in these Counts mean the aural acquisition of the contents of any wire communication through the use of any electronic, mechanical or other device.

The phrase "aural acquisition" as used in this case means the acquiring or obtaining of the contents

of a wire communication in such a manner that the contents may be heard. A tape recorder attached to a device that turns on when a phone is picked up, and then records the conversation is a method of aural acquisition.

The phrase "wire communication," as used in these counts means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the points of origin and the point of reception furnished or operated by any person, including any company or corporation engages as a common carrier, and providing or operating such facilities for the transmission of interstate or foreign communications.

The New York Telephone Company's normal lines and services provide such a wire communication. The phrase "electronic, mechanical or other device" is used in Count Five, Six and Seven; it means any device or apparatus which can be used to intercept the wire communication.

A tape recorder, automatic device turning it on, wires to conrect is such a device. The term "endeavor" as used in these counts means any effort to accom-

plish the evil. The offense is not limited to the successful interception of a wire communication, but is also directed to, as I pointed out, as an endeavor to do so.

If a tape recorder was attached to a telephone connection box with the intent that the conversation on a particular telephone be picked up and recorded, this would constitute an endeavor within the meaning of the Statute.

Now, that is the law which applies to these particular Counts as charged.

To sum it all up, it seems to me the central issue in the case, and I emphasize this is for you to decide, and the facts are for you to decide, not for me, the central issue comes down to two relatively simple questions of fact, which need to be determined beyond a reasonable doubt as to each defendant, concerning Count One to Four, did he use his position as a Police Officer to shake down money from persons suspected of drug dealings?

Concerning Counts Five to Seven, Did he use illegal wiretaps to attempt to intercept telephone conversations? To decide this, you will have to determine how much of the Government's witnesses you believe.

A difficult aspect of your duty is to determine the credibility of the witnesses before you, and to weigh their testimony. In weighing their testimony, you may consider the relationship of the witness to the Government or the defendants; the witness' bias or interest in the outcome of the case; his or her manner while testifying; his or her candor and intelligence, as you have observed it; and the extent to which the witness has been corroborated and contradicted by other credible evidence.

If you believe that a witness has willfully Sworn falsely before with respect to a material element of the case, you may disregard his or her testimony in whole, or in part. But, a witness may have been mistaken, or may have lied with respect to part of his testimony, and be accurate with respect to other parts.

The fact that a witness has been convicted of a crime may be considered by you as evidence of lack of morality, which may make it more likely that he will lie on the witness stand. A person who has committed perjury must have his testimony even more carefully considered. This doesn't mean that they will necessarily lie or have lied. That's up to you to decide, based on what you see and hear.

You are not to give any greater weight or credibility to the testimony of a witness who testifies in this case solely because of the fact that he is an employee of a Governmental agency. His testimony is to be evaluated in the same manner as you would evaluate the testimony of any other witness.

Testimony of an accomplice or informer needs to be carefully scrutinized by you. In the first place, the fact that the witness committed a felony shows a defect in his character that may have made him more likely to lie on the witness stand.

In the second place, he can be punished for his own offense so the he may try to court the prosecutor's favor and avoid some degree of punishment himself. Or he may testify in return for advantages to be received. That doesn't mean that everybody in that condition will lie, or that any of the people lied or didn't lie. You have to decide that yourself, based upon what you saw and heard.

A user of drugs may, because of his use of drugs, be so much under their influence as to be an inadequate observer, or have impaired memory or ability to distinguish between truth and falsity. Drugs were used by one of the witnesses, Olate; whether it had any effect whatsoever is something for you to decide, not I.

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THE COURT: (continuing) Nothing that I have said should be taken as expressing any view of mine with respect to the credibility of any witness -- in favor of credibility or against credibility, that's for you to decide, based upon your long knowledge and experience as human beings.

The law does not prohibit the use of Informants or alleged accomplices, or the pleas or other arrangements which the witnesses here described. Whether you approve of their use or of any promise or advantage given to any of these witnesses should not enter into your decision as to whether these defendants are guilty or innocent. That's a decision for you: Are these defendants guilty or innocent?

You may, of course, consider these matters on the issue of credibility, as I have already indicated.

The mere number of witnesses and documents has no necessary relationship to the burden of proof. Your recollection of the evidence governs. But we have a transcript. And if you wish any of the testimony repeated, if you will send in a note, I will try to, with the assistance of counsel, determine what it is you want to hear, and then have you brought in and read it.

Try to be specific. We want to avoid reading

large portions of testimony which are not really necessary in your deliberations.

If you are confused on the law, you may send in a note and I will try to assist you. If you want any portion of the Charge, let me know.

You are entitled to your own opinion, but you should exchange views with your fellow jurors and listen carefully to each other. While you should not hesitate to change your opinion if you are convinced that another opinion is correct, your decision must be your own.

Any verdict must be unanimous.

Your Oath sums up your duty -- and that is, without fear or favor to any person, you will well and truly try the issues before these parties according to the evidence given to you in court, and the laws of the United States.

Now, I think you better all go in, and I will excuse you for a few minutes. I don't want you to discuss this case until I tell you. I will bring you in and I will give you what you need, and then you can go in and discuss it. But I want to discuss something with the attorneys before I have you deliberate.

(Whereupon, the jury retired from the courtroom.)

THE COURT: I will hear any objections on the Charge first.

MR. KAPLAN: The Government has no exceptions, your Honor.

MR. BRACKLEY: Nothing, Judge.

MR. WALL: Your Honor --

THE COURT: Yes.

MR. WALL: Your Honor, the defendant Codelia respectfully excepts to that portion of your Honor's Charge in which you indicated that in order to convict under Counts Two, Three and Four, it was sufficient that the Government prove a willfull act, and the deprivation of a right, as a result of that act. My grounds being the same as I have urged before, that it requires a specific intent in terms of a Federal right.

THE COURT: When I charged that, you understand -- I think it was clear to the jury -- that my definition of specific intent was accomplished.

MR. WALL: Yes.

THE COURT: But you object to my definition of specific intent?

MR. WALL: Yes. That's the point I am making.

THE COURT: You think I have to tell them that they have to specifically intend to take away a Constitutional right, having a Constitutional right in mind: is that right?

MR. WALL: I think that it is not quite that, your Honor. I think it must be more than a Police Officer taking money from a person. And what I think is required is that at the time the motivating purpose is not to get the money, but to deprive the person of the right to -- of the property. That is basically what I am saying.

THE COURT: Well, I think that is what I charged. But you have an exception.

MR. LAZARUS: I take the same exception.

THE COURT: Anything further?

MR. WALL: Just two more, I think, your Honor.

The defendant Codella respectfully excepts to that portion of your Honor's Charge in which you indicated that a defendant need not be aware that he was violating a Federal law. And my except on goes solely to the Conspiracy Count, Count One, in light of the position I took yesterday.

THE COURT: Yes.

MR. WALL: And, your Honor, at the bottom of page 23 of the draft number two, I think this epitomizes the point I am trying to make.

THE COURT: Twenty-two?

MR. WALL: Page 23, your Honor. I except to the portion of your Honor's Charge -- which I suppose to be

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specific I'd better read it.

"If you find beyond a reasonable doubt that a defendant, or someone whom he was aiding or abetting, took money from the persons named in the indictment for personal, unlawful financial gain, while acting under cover of law, then you may find that that defendant is guilty of depriving an individual of property without the due process of law -- the right secured by the Fifth and Fourteenth Amendments to the United States Constitution."

Your Honor, I am excepting to that portion of the Charge, together with other portions which state virtually the same thing, on the grounds that I have already alleged, that this -- if the jury believes that this is the law, then any Police Officer who steals from someone is guilty of the violation of Section 242. And I do not believe that to be the law. There must be a specific intent to direct toward the Constitutional rights, not merely toward the taking of money.

THE COURT: What is the Government's position?

MR. KAPLAN: I don't quite understand. It seems to me we litigated this a number of times.

MR. WALL: We have.

MR. KAPLAN: I don't understand the thrust of the argument. The law is clear, as far as I am concerned.

THE COURT: Are you satisfied with the Charge?

MR. KAPLAN: I am satisfied.

MR. LAZARUS: I made the same argument. It was advanced in the motion to dismiss the indictment originally. And I except.

MR. BRACKLEY: I join in those exceptions, Judge.

THE COURT: YOu don't sound very convinced.

MR. KAPLAN: There's been a Southern Circuit case, where a Legal Aid --

THE COURT: I am not going to change it.

MR. KAPLAN: -- for the Court's edification, where a Legal Aid lawyer was taking money, and the same theory was used, 241 and 242. It was again the Government --

THE COURT: Give me the Charge in that case.

MR. KAPLAN: I think we have it.

I have one exception to the Chart before we send it in to the jury.

THE COURT: What is it?

MR. KAPLAN: Under the witnesses -- It is a little misleading. You listed Paul Sturm as manager of 8401 Main Street, Flushing, while in reality the man was the superintendent of the building at 65-15 38th Avenue.

Now, this is his present position. But the jury is obviously misled in that this man is --

THE COURT: How do you want it?

MR. KAPLAN: Superintendent.

MR. BRACKLEY: Former superintendent.

MR. KAPLAN: Former superintendent of 65-15 38th Avenue.

THE COURT: Former superintendent. Is that Sturm, S-t-u-r-m?

MR. KAPLAN: Stern, S-t-e-r-n.

THE COURT: I am sorry. How should we list it?

MR. KAPLAN: Former superintendent in 65-15 38th Avenue.

THE COURT: 65-15 --

MR. KAPLAN: 38th Avenue. And you can list it as present manager of 8401.

THE COURT: All right. I'll have them write that in.

MR. KAPLAN: No problem.

THE COURT: Is that all right?

MR. BRACKLEY: Yes.

THE COURT: Could you assist him in writing that in?

Unless you want to Xerox that page? Maybe it's easier to write it in.

MR. LAW CLERK: Yes Mr. Kaplan?

MR. KAPLAN: Well, so long as it's obvious.

MR. WALL: Why don't we tell them?

MR. KAPLAN: I would rather -- They may be confused by this new list.

In addition, on the Chart that the -- It seems that the addresses may not be clear. We have referred to them during the course of the trial as the first wiretap, which is G-Z. The second one is the Krimpke wiretap, and the third is Espinoza wiretap. Perhaps we -- We have all agreed that those are the names we have used.

THE COURT: All right, let me have that.

MR. LAZARUS: I would object to that. You're starting to piece in evidence.

THE COURT: All right. You're objecting. I won't do it.

MR. LAZARUS: We are starting to put pieces of the record in there.

THE COURT: All right. Then I won't do it.

Is there anything further?

MR. BRACKLEY: No.

MR. LAZARUS: No.

THE COURT: We have this problem of the juror, Grace Jorgensen.

MR. WALL: Excuse me. I am sorry. I just wanted for the record to except to your Honor's failure to Charge

as requested both with respect as to the presumption of regularity in Court Exhibit number 24, and with respect to the two items that I gave you last week. I think only one of them was included in the Charge, to the extent that your Honor failed to Charge the Request that I accepted.

THE COURT: Anything further?

What do you want to do about Grace Jorgensen? She's obviously coming down with a cold. She looks very pale to me. She has heavy circles under her eyes. She's coughing, and she's the only female juror.

MR. BRACKLEY: Well, we have Mrs. McGuinness.

THE COURT: Is she an Alternate?

MR. BRACKLEY: No. Juror No. 6.

THE COURT: Yes. That's right.

MR. BRACKLEY: I think that she said she was all right.

THE COURT: She doesn't look good to me. And if the case goes over for a few days, it's liable to create a serious problem.

MR. BRACKLEY: I don't think that she should be excused unless she wants to. She said she didn't want to be.

MR. WALL: I would think if she is advised that there could be a problem, if she does come down being

ORIGINAL DOCKET ENTRIES
74 CR 180

D. C. Form No. 100
CRIMINAL DOCKET

74 CR 180 WEINSTEIN

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	deft.Wolff:
EDWARD CODELIA	Paul Goldberger
JOHN EGAN	401 Broadway, NYC.
RAMON VIERA	925-2105
JOHN MC CLEAN	
LESLIE WOLFF	For Defendant: VIERA-Robert
	Lazarus- 16 Court St, B'k
	855-2200

Did conspire to hinder and obstruct justice

ABSTRACT OF COSTS	AMOUNT		DATE	
Fine,				
Clerk,				
Marshal,				
Attorney,				
Commissioner's Court,				
Witnesses,				

CASH RECEIVED AND DISBURSED

NAME	RECEIVED	DISBURSED

DATE	PROCEEDINGS
3-8-74	Before MISHLER, CH.J.- Indictment filed
3-8-74	Before WEINSTEIN J - case called - deft EDWARD CORDELIA & counsel Frank Ortiz present - deft arraigned and enters a plea of not guilty - deft O.R. trial set for May 6, 974. deft JOHN EGAN & counsel Victor Herwitz present - deft arraigned and enters a plea of not guilty - trial set for May 6, 197 - deft O.R. Deft McLean & counsel Albert Brackley present - deft arraigned and enters a plea of not guilty deft-O.R.
3-8-74	Notice of Appearance filed (JOHN EGAN)
3-8-74	Notice of Appearance filed (JOHN McLEAN
3-8-74	Notice of Appearance filed (CORDELIA)
3-8-74	Notice of appearance filed (VIERA)

74 CR 180

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
3-11-74	Before WEINSTEIN,J.- Case called- Deft and counsel present- Deft arrd and enters a plea of not guilty- Pre-trial conference held and concl Deft O.R.- Trial set for 5-6-74 (viera)		
3-11-74	Notice of appearance filed (VIERA)		
3-12-74	2 stenographers transcripts filed each dated Mar. 8, 1974.		
3-12-74	Memorandum of Magistrate Catoggio to Judge Weinstein that pursuant to Judge's authority deft Viera's bail limits extended to all of N.Y. Sta etc.		
3-28-74	Magistrate's file 74 M 363 inserted into CR file.		
4-10-74	Notice of Appearance filed (WOLFF)		
4-10-74	Before WEINSTEIN J - case called - deft WOLF & counsel Paul Goldberger present - deft arraigned and enters a plea of not guilty - trial set to follow 74 CR 179.		
4-17-74	Magistrates file 74M542 inserted into CR file		
4-25-74	Letter of 4-24-filed received from Chambers re deft Leslie Wolff from Paul Goldberger, Esq.		
4-30-74	Notice of Motion filed and affidavit in support of deft Viera's motion to dismiss the Indictment, etc. (ret. May 6, 1974)		
5-6-74	Affidavit of FRANK ORTIZ filed(recvd from Chambers)		
6-6-74	Before WEINSTEIN J - case called - On motion of AUSA Kaplan the Indictment is dismissed without prejudice as to all defts.		
5-6-74	By WEINSTEIN J - Order of dismissal filed (all defts.)		

ORIGINAL INDICTMENT
74 CR 180

241a

TTP:lag
F. #

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ MAR 8 1974 ★
TIME A.M.....
P.M.....

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

EDWARD CODELIA
JOHN EGAN
RAMON VIERA
JOHN MC CLEAN and
LESLIE WOLFF,

Defendants.

- - - - - - - - - - - - - - - - - - - X

INDICTMENT

Cr. No._____
(21 U.S.C., §§173 and 174; 18 U.S.C., §§ 3, 371, 1510 and 2511(1)(a))

74CR 180

THE GRAND JURY CHARGES:

INTRODUCTION

1. EDWARD CODELIA, JOHN EGAN, RAMON VIERA, JOHN MC CLEAN and LESLIE WOLFF, the defendants, at all times herein, were policemen assigned to the Bureau of Narcotics, Special Investigation Unit of the New York City Police Department.

2. The Bureau of Narcotics and Dangerous Drugs, at all times relevant herein, was an agency of the United Sates Department of Justice charged with investigating violations of the criminal laws of the United States relating to narcotic drugs.

3. The Bureau of Customs, at all times relevant herein, was an agency of the United States Treasury Department charged with investigating violations of the criminal laws of the United States relating to narcotic drugs.

4. The Immigration and Naturalization Service, at all times relevant herein, was an agency of the United States Department of Justice charged with investigating violations of the

criminal laws of the United States relating to passports, visas and fraudulent entries.

5. The importation into the United States, contrary to law, of narcotic drugs and the receipt, concealment, purchase and sale, and the facilitation of the transportation, concealment, purchase and sale of narcotic drugs were, at all times relevant herein, crimes under the laws of the United States.

COUNT ONE

1. From on or about September 30, 1970, up to and including the date of the filing of this indictment, in the Eastern District of New York and elsewhere, EDWARD CODELIA, JOHN EGAN, RAMON VIERA, JOHN MC CLEAN and LESLIE WOLFF, the defendants, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to defraud the United States and its departments and agencies in connection with the performance of their governmental functions, by obstructing and hindering the United States Department of Justice, the Bureau of Narcotics and Dangerous Drugs, the Immigration and Naturalization Service, and the Bureau of Customs in investigating and prosecuting violations of the narcotics and immigration laws of the United States and to violate Sections 173 and 174 of Title 21, United States Code, and Sections 3 and 1510 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendants would and did agree to arrest Nicodemus Olate, Justo Quintanilla and others, hereinafter "the offenders", and in connection with said arrest to seize approximately $80,000.00 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and to divide such currency among the

defendants without reporting said seizure to the New York City Police Department or to Federal law enforcement authorities, thereby depriving the United States Government of evidence of violations of the narcotics laws of the United States.

3. It was further a part of said conspiracy that the defendants wilfully, knowingly and unlawfully would facilitate the transportation, concealment and sale of quantities of narcotic drugs, after the said narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

4. It was further a part of said conspiracy that the defendants, knowing that violations of the United States narcotics laws had been committed, would relieve, comfort and assist "the offenders" in order to hinder and prevent their apprehension, trial and punishment.

5. It was further a part of said conspiracy that the defendants wilfully, knowingly and unlawfully would endeavor by means of bribery, misrepresentation, intimidation, force and threats thereof to obstruct, delay and prevent the communication of information relating to violations of the United States narcotics and immigration laws by other persons to criminal investigators.

6. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

OVERT ACTS

In furtherance of, and to effect the objects of the said conspiracy, the defendants committed the following overt acts, among others, in the Eastern District of New York and

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elsewhere:

1. On or about November 19, 1970, defendants CODELIA, EGAN, VIERA, MC CLEAN and WOLFF arrested Nicodemus Olate, Justo Quintanilla and another at 65-15 38th Avenue, Queens, New York.

2. On or about November 20, 1970, defendants CODELIA, VIERA, MC CLEAN and WOLFF obtained approximately $68,000.00 from a safety deposit box located in a Manhattan bank.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 371.)

COUNT TWO

On or about November 19, 1970, in the Eastern District of New York and elsewhere, EDWARD CODELIA, JOHN EGAN, RAMON VIERA, JOHN MC CLEAN and LESLIE WOLFF, the defendants, knowing that offenses against the United States had been committed, to wit, violations of the narcotics laws of the United States, wilfully, knowingly and unlawfully did relieve, comfort and assist "the offenders" named in Count One and others in order to hinder and prevent said offenders' apprehension, trial and punishment, in that, among other things, the defendants deliberately withheld and failed to report and turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately $80,000.00 in United States currency, which currency constituted evidence of violations of the narcotics laws of the United States. (Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 3.)

COUNT THREE

In or about November 1970, EDWARD CODELIA, JOHN EGAN, RAMON VIERA, JOHN MC CLEAN and LESLIE WOLFF, the defendants, wilfully, knowingly and unlawfully did endeavor by means of

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bribery, misrepresentation, intimidation and force and threats thereof, to obstruct, prevent and delay the communication of information relating to violations of Sections 173 and 174 of Title 21, United States Code, to criminal investigators, in that, among other things, the defendants deliberately withheld and failed to report and turn in to any authorized law enforcement agency, and instead retained and divided among themselves approximately $80,000.00 in United States currency, which currency constituted evidence of violations of the narcotics laws of the United States. (Title 18, United States Code, Sections 1510 and 2.)

COUNT FOUR

From on or about the 31st day of October 1970 and continuing up to on or about the 30th day of November 1970, in the Eastern District of New York, JOHN MC CLEAN, RAMON VIERA and EDWARD CODELIA, the defendants, and Joseph Nunziata, now deceased, who is named as a co-conspirator but not as a defendant, wilfully, knowingly and unlawfully did intercept and endeavor to intercept by means and use of an electronic device, that is a telephone wiretap, wire communications made and sent during the period aforesaid, by and between persons over a telephone located at 65-15 38th Avenue, Queens, New York. (Title 18, United States Code, Section 2511(1)(a).)

A TRUE BILL.

FOREMAN.

Edward J. Boyd V

EDWARD JOHN BOYD V 6072
United States Attorney
Eastern District of New York

JUDGMENT and COMMITMENT

of

JOHN McCLEAN

RAMON VIERA

EDWARD CODELIA

247a

United States of America vs.

United States District Court for

DEFENDANT: JOHN McCLEAN

EASTERN DISTRICT OF NEW YORK

M'FILMED

DOCKET NO. 74 CR 729

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 10/74

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 6 DAY 12 YEAR 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[XXX] WITH COUNSEL Albert Brackley, Esq.
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged
[XXX] GUILTY. in Counts 1,2,3,4,5 and 7

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C, Sec. 241, 242 371, 2511(1)(a) and 2, in that from in or about June 1969 and Dec. 2, 1971, both dates being approximate and inclusive, the defendant with others, did wilfully conspire to injure, oppress, threaten and intimidat citizens of the U.S. in the free exercise and enjoyment of rights and privileges secured to them by the laws of the U.S. and would use their authority as police officers to appropriate to themselves monies from others and to arrest others and hold them in custody thereby depriving them of a right and privilege without due process of law and did unlawfully intercept a wiretap.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 1 year. pursuant to T-18, U.S.C. Sec. 4208(a)(2) on counts 1,2,3 and 4 to run consecutively and fined $1,000.00 on each of counts 1,2,3 and 4 to run consecutively and sentenced to 5 years imprisonment pursuant to T-18, U.S.C. Sec. 4208(a)(2) on counts 5 and 7 to run concurrently and consecutively with counts 1,2,3 and 4 for a total prison sentence of 9 years and fined $10,000.00 on each of counts 5 and 7 to run concurrently and to run concurrently with fined imposed on counts 1,2,3 and 4 for a total fine of $10,000.00. Stay of execution of sentence granted pending appeal.

SPECIAL CONDITIONS OF PROBATION

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ JUN 12 1975 ★
TIME A.M.
P.M.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
[ ] U.S. District Judge
[ ] U.S. Magistrate

Jack B. Weinstein

Date June 11, 1975

43

United States of America vs.

United States District Court for Eastern District of New York

DEFENDANT: RAMON VIERA

DOCKET NO.: 74 CR-729

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 6 DAY 12 YEAR 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Patrick Wall, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. (counts 1 to 5 incl)

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C.Secs.241 ,242, 371, 2511(1)(a) & 2, in that from in or about June 1969 and Nov. 20,1970 both dates being approximate and inclusive, the defendant,with others, did wilfully conspire to injure, oppress, threaten and intimidate citizens of the U.S. in the free exercise and enjoyment of rights and privileges secured to them by the laws of the U.S. and would use their authority as police officers to appropriate to themselves monies from others and hold them in custody and did unlawfully intercept by means of an electronic device, that is, a telephone wiretap, wire communications made and sent during a certain period

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

one year pursuant to Title 18, U.S.Code, Sec. 4208(a)(2) on counts 1, 2, 3 and 4 to run consecutively and 5 years imprisonment on count 5 pursuant to Title 18, U.S.Code, Sec. 4208(a)(2) to run consecutively with counts 1, 2, 3 and 4 for a total prison sentence of 9 years and fined $10,000 on count 5 - stay of execution of sentence granted pending appeal.

SPECIAL CONDITIONS OF PROBATION

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y. JUN 12 1975 TIME A.M. P.M.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[ ] U.S. District Judge

[ ] U.S. Magistrate

Jack B. Weinstein

Date June 11, 1975

2/1

249a

United States of America vs.

United States District Court for Eastern District of New York

DEFENDANT: EDWARD CODELIA

DOCKET NO.: 74 CR 729

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 6 DAY 12 YEAR 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Patrick Wall, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. (counts 1, 2, 3, 4, 5 & 7)

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C.Secs.241,242, 371, 2511(1)(a) & 2, in that from in or about June 1969 and Dec 2,1971, both dates being approximate and inclusive, the defendant, with others, did wilfully conspire to injure, oppress, threaten and intimidate citizens of the U.S. in the free exercise and enjoyment of rights and privileges secured to them by the laws of the U.S. and would misuse their authority as police officers to appropriate to themselves monies from others and to arrest others and hold them in custody thereby depriving them of a right and privilege without due process of law and did unlawfully intercept by means of an electronic device, that is, a telephone wiretap, wire communications made and sent during a certain period

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

one year on counts 1, 2, 3 & 4 pursuant to Title 18, U.S.Code, Sec. 4208(a)(2) to run consecutively and 5 years imprisonment on counts 5 and 7 to run concurrently and consecutively with counts 1, 2, 3 & 4 for a total prison sentence of 9 years and fined $10,000 on each of counts 5 and 7 to run concurrently for a total fine of $10,000. Stay of execution of sentence pending appeal is granted.

SPECIAL CONDITIONS OF PROBATION

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y. JUN 12 1975 TIME A.M. P.M.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[ ] U.S. District Judge

[ ] U.S. Magistrate

Jack B. Weinstein

Date June 11, 1975

NOTICE OF APPEAL

251a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

74 Cr. 729 (JBW)

- against -

NOTICE OF APPEAL

JOHN McCLEAN, RAMON VIERA
and EDWARD CODELIA,

Defendants.

----------X

S I R S :

PLEASE TAKE NOTICE that the above-named defendants hereby appeal to the United States Court of Appeals for the Second Circuit from judgments entered against them in this Court on June 12, 1975.

Dated: New York, New York
June 20, 1975

Yours, etc.,

Patrick M. Wall
36 West 44th Street
New York, New York 10036
(212) 986-6688

Counsel to Defendants

TO:

Clerk
United States District Court for
the Eastern District of New York

Hon. David G. Trager
United States Attorney for the
Eastern District of New York

Service of three (2) copies of the within
is admitted this 29 day of September 1975

U.S. Attorney for the Eastern District
Attorney for the Appellee

U.S.A.
SEP 29 12 43 PM '75
EAST. DIST. N.Y.